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OVERSIGHT OF THE FAMILY SUPPORT ACT OF 1988

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

MAY 25, 1989

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OVERSIGHT OF THE FAMILY SUPPORT ACT OF 1988

THURSDAY, MAY 25, 1989

House of Representatives,
Committee on Ways and Means,
Subcommittee on Human Resources,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room B-318, Rayburn House Office Building, Hon. Thomas Downey (acting chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
WEDNESDAY, APRIL 26, 1989

PR #9
SUBCOMMITTEE ON HUMAN RESOURCES
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

THE HONORABLE THOMAS J. DOWNEY (D., N.Y.), ACTING CHAIRMAN, SUBCOMMITTEE ON HUMAN RESOURCES, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES OVERSIGHT HEARINGS ON THE FAMILY SUPPORT ACT OF 1988

The Honorable Thomas J. Downey (D., N.Y), Acting Chairman, Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will hold a series of oversight hearings on the Family Support Act of 1988 (Public Law 100-485). The first hearing will focus on the Department of Health and Human Services' proposed regulations for implementing the Job Opportunities and Basic Skills Training (JOBS) program and the child care provisions of the Act. The hearing will be held on May 25, 1989, in room B-318 Rayburn House Office Building, beginning at 10:00 a.m. Additional hearings will be announced in subsequent press releases.

In announcing this first hearing, Acting Chairman Downey said: "Enacting the Family Support Act of 1988 was a major accomplishment of the 100th Congress. This legislation, the first major welfare reform legislation in decades, redirects the Aid to Families with Children (AFDC) program. We are no longer in the business of simply handing out assistance checks. Rather, the government has a new responsibility to provide AFDC recipients with true and lasting opportunities to achieve self-sufficiency."

"But Federal legislation and a strong Federal mandate are not enough to guarantee success. The executive branch in Washington and the executive offices in the States must ensure that the letter and the spirit of this law are carried out. The Subcommittee will carefully oversee this process. At this first hearing, we will review the Administration's proposed rules for implementing one of the most important parts of the Act -- the JOBS program."

The Family Support Act of 1988 was signed into law on October 13, 1988. The Act requires significant changes to the child support enforcement program, creates a new JOBS education, employment and training program, expands supportive assistance for AFDC families working to leave welfare and transitional assistance for those who leave welfare, and requires each State to provide AFDC benefits to two-parent families. Proposed rules for the JOBS program were required to be issued six months after enactment of the Act. On April 18, 1989, the Administration issued the proposed rules for the JOBS program in the Federal Register (vol. 54, no. 73).

At the hearing, testimony will be heard from Administration officials and public witnesses. Testimony should focus on the Administration's proposed regulations and the extent to which specific regulations conform to the law, promote streamlined and efficient program operations, target the services to those most in need, promote activities leading to long-term self-support, and respect the needs and goals of individual participants.

(MORE)

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Individuals and organizations interested in presenting oral testimony before the Subcommittee must submit their requests to be heard [(202) 225-1721] no later than the close of business, Thursday, May 18, 1989. The telephone request must be followed by a formal written request to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee staff will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee [(202) 225-1025].

It is urged that persons and organizations having a common position make every effort to designate one spokesperson to represent them in order for the Subcommittee to hear as many points of view as possible. Time for oral presentations will be strictly limited with the understanding that a more detailed statement may be included in the printed record of the hearing. **(See formatting requirements below.)** This process will afford more time for members to question witnesses. In addition, witnesses may be grouped as panelists with strict time limitations for each panelist.

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear are required to submit 100 copies of their prepared statements to the Subcommittee office, B-317 Rayburn House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to comply with this requirement may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement by the close of business, Thursday, June 8, 1989, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public, they may deliver 100 additional copies for this purpose to the Subcommittee office on the day of the hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

Acting Chairman Downey. The Subcommittee on Human Resources will come to order.

This morning we begin the first of what will be many hearings on implementation of the Family Support Act of 1988. Passing this legislation was a necessary and important step. It took a lot of hard work and difficult compromises.

But we are only part way there. Now it is up to the States and the Federal Government to work together to implement this legislation, and to assure that the letter and spirit of the new law are carried out. As we throw ourselves into the details, we must not forget our goal: To truly help welfare recipients lead better and more productive lives.

Toward that end, I want to announce that in addition to this hearing and others that we will hold here in Washington, the subcommittee will be going on the road. Over the next 6 months, we will hold three field hearings to monitor implementation of the Family Support Act, traveling to San Francisco, Chicago, and Little Rock. Our first visit will be to San Francisco to learn more about California's GAIN Program and that State's efforts to implement the Family Support Act in general.

The topic for today is the proposed rules for the new JOBS Program. Let me begin by congratulating the Family Support Administration on a job well done. It is obvious that you worked hard on these regulations.

I am pleased that most of the explanations of policy are clear and concise and that the proposed regulations were issued within the time frame set by the statute. I am certain that it was not easy to do so.

I am troubled, however, by the lack of flexibility you gave States in several instances where greater State discretion could and should have been allowed.

The JOBS Program is a partnership between the States and the Federal Government. It can't work without a commitment from the States and it won't work if the Federal Government behaves like a mistrustful and overbearing parent.

To succeed we must all resist the temptation to fall back into our old roles; the Federal Government can't lurk suspiciously behind every corner, assuming that the States are simply trying to "game" the system in a way that maximizes Federal funding. You can be assured that I will hold the Governors to their commitments. I will also be watching very closely to be certain that the Federal Government keeps its end of the bargain.

Mr. Shaw, do you have anything you want to add?

Mr. Shaw. Thank you, Mr. Chairman.

I have no opening statement but to say that I look forward to the hearing this morning. Thank you.

Acting Chairman Downey. We are pleased and privileged to welcome Howard Rolston, Associate Administrator for Program Evaluation, Family Support Administration. We welcome you.

We know Katherine is in China, I hope participating in the demonstrations at Tiananmen Square.

We are delighted she is there and you are here. If you would begin.

STATEMENT OF HOWARD ROLSTON, ASSOCIATE ADMINISTRATOR FOR PROGRAM EVALUATION, FAMILY SUPPORT ADMINISTRATION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. ROLSTON. Mr. Chairman, members of the committee, thank you for the opportunity to discuss this subject of critical interest to ADFC recipients, the States, the Congress and the administration—our progress in implementing the Job Opportunities and Basic Skills Training provisions of the Family Support Act of 1988.

I would like to submit a more detailed statement for the record and make some brief comments at this time.

We in the Family Support Administration have undertaken a myriad of new projects and activities since passage of the Family Support Act. I would like to discuss with you the centerpiece of our efforts, the timely publication of the proposed JOBS regulations.

We firmly believe the only way to have a quality regulation was to involve the key Federal departments, State and local agencies, public interest groups and all other organizations that have been involved or could be involved in helping the disadvantaged become self-sufficient.

We began meetings and discussions soon after passage of the act and continued contact throughout the development of the regulations. You will find the proposed regulations have benefited greatly from the input of all of these meetings. And although this process helped us avoid many pitfalls in developing the JOBS Program, it nonetheless brought us the task of balancing diverse and sometimes conflicting positions. Instead of taking your time to describe further the content of the proposed JOBS rules, I would like to include for the record a summary of the main provisions. I now wish to address some of the areas in which the comments we have received suggest there are major disagreements with the proposed regulations. One of our primary tasks over the next few months will be to address these significant concerns before publishing the final JOBS rules.

It is important to note, however, that while the areas of disagreement are significant, there are many broad areas of agreement as well. On that note, let me begin with a discussion of the most broadly discussed issues by commenters to date—the approach we have taken on participation requirements in the JOBS Program.

We are firmly committed to the principle that the JOBS participation which qualifies a State for enhanced matching must be meaningful and significant. In order to assure this is the case in every State, there must be a minimal Federal standard for what constitutes participation.

States maintain the participation standards go beyond legislative intent and are overly restrictive. One concern is the provision that only the mandatory or optional JOBS components, such as education activities and JOBS search count as participation.

It is our view that effective participation in the program must be measured primarily by the number of individuals who are successfully provided the work, training and educational skills that can lead them to find and retain employment. These skills can only be acquired in the program activities included in the participation rate.

States will argue the minimum activity levels set out for each program component are too restrictive. We received numerous requests from States to permit the definitions of participation in each of the components to be set individually by the States. We did not do so because we believe that while the legislation intended to offer flexibility to the States in deciding how to design their programs, it also made clear that participation be significant. As stated earlier, this cannot be achieved without a minimum Federal standard.

We believe the minimum activity levels set forth in the proposed rules are both reasonable and achievable. However, if commenters can suggest a more effective mechanism for assuring States are accountable for meaningful participation levels, we would welcome their ideas.

The next major area of concern surrounds what the commenters see as an overly restrictive definition of the child care guarantee. In the proposed rule we distinguish between the absolute entitlement of employed AFDC recipients and former recipients in transition status to receive child care benefits, and the conditional entitlement of recipients in the JOBS Program.

We believe the best reading of the statute is that the State is required to guarantee child care for the latter group to the extent that it requires such individuals to participate in JOBS. Thus, if a State has exhausted its resources to pay for child care, or the supply is insufficient, a State could not require additional individuals to participate in JOBS.

There has been some misunderstanding regarding our references to informal child care in the preamble of the proposed rules. Those references were intended to clarify that the most common form of child care used by AFDC recipients; namely, informal, unpaid care, continues to be permissible under JOBS if the recipient prefers that arrangement.

Finally, on restrictions placed on funding to expand the child care supply generally, the legislative history is clear the Family Support Act was not intended to pay for directly increasing the supply of child care.

We are aware that several individuals, including the chairman of this subcommittee, are concerned about our definition of the basic literacy level.

We proposed that the objective of "education to achieve a basic literacy level" is to provide an individual with the equivalent of successful completion of the eighth grade. We chose this definition because it was consistent with the one used by the Department of Education. Since the statute requires JOBS Programs to provide basic education, GED and high school activities, we believed that the proposed rules provided for the full range of educational activities.

However, given the number and diversity of comments on this provision, we are open to any suggestions on how we might improve it.

While I have given some arguments for our positions, I want to repeat we are actively seeking ideas and comments from all interested parties during the comment period which ends on June 19. We devoted a great deal of energy and resources into the development of the JOBS Program and we plan to continue this effort. I would be pleased to answer any questions that you have.

[The statement of Mr. Rolston follows:]

STATEMENT BY HOWARD ROLSTON

ASSOCIATE ADMINISTRATOR, OFFICE OF PROGRAM EVALUATION

FAMILY SUPPORT ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Chairman and Members of the Committee.

Thank you for the opportunity to discuss with you today a subject of critical interest to AFDC recipients, the States, the Congress and the Administration -- our progress in implementing the Job Opportunities and Basic Skills Training (JOBS) provisions of the Family Support Act of 1988.

Seven months ago, Congress enacted the Family Support Act of 1988 -- a significant first step in helping the nation's welfare families reduce their dependence on government and achieve economic independence. The Family Support Act embodies a new consensus that the well-being of children depends not only on meeting their material needs, but also on the parent's ability to become self-sufficient.

One of the key changes made by the legislation to achieve this goal was the creation of a new program of education, work and training activities for welfare recipients, the Job Opportunities and Basic Skills Training (or JOBS) program. The Act also strengthens the Child Support Enforcement Program addressing the failure of absent parents to assume responsibility for their children's support. But, since the subject of this hearing is the newly-created JOBS program, I will limit my testimony to this topic.

We, in the Family Support Administration, the agency responsible for the AFDC program and the implementation of the JOBS program within the Department of Health and Human Services, have undertaken a myriad of new projects and activities since passage of the Family Support Act. I would like to share with you some of the highlights of our endeavors--the centerpiece of which was the timely publication of the proposed JOBS regulations as required by the Statute. From the beginning, Secretary Sullivan emphasized that implementation of the Family Support Act would be one of his highest priorities. It took just such a commitment in order to accomplish the great task that you set out for us.

We firmly believed that the only way to have a quality regulation was to involve, early on in the process, the key Departments, State and local agencies, public interest groups and all other organizations that have been involved, or could be involved, in helping the disadvantaged become self-sufficient. We began meetings and discussions soon after passage of the Act and continued contact throughout the development of the regulations.

We developed productive working relationships with our counterparts in the Departments of Education, Labor and Interior. We maintained an effective dialogue with State welfare directors, the National Governors Association, the American Public Welfare Association, the Native American Employment and Training Coalition, the National Association of Counties, the National Alliance of Business, the Coalition on Human Needs, the AFL-CIO, the National Association of Private Industry Councils, and the United Way of America, to name just a few. We also held discussions with private school organizations such as the Association of Independent Schools and Colleges and with the Literacy Volunteers of America. We sent representatives to the regional meetings of the State directors of adult education. In all, over 26 meetings were hosted or attended between September and March.

You will find that the proposed regulations have benefitted greatly from the input of all of these organizations. And although this process helped us avoid many pitfalls in developing the JOBS program, it nonetheless brought us the task of balancing diverse and sometimes conflicting positions--our interpretation of legislative intent; State welfare, education, employment and child care interests; the needs of the business and welfare communities; and finally, the fiscal constraints of both the State and Federal governments.

As a result of this lengthy process, we established nine key principles which guided the development of the entire proposed regulation. Since they are reflected in all aspects of our proposed rules, I would like to briefly describe these nine key principles.

1) JOBS resources must be targeted on those hardest to serve and most at risk for long-term dependence. In the AFDC population those most likely to remain on welfare for long periods of time are mothers who did not complete high school and who had their first child at a young age.

2) Program resources must be targeted on services, rather than on administration. In defining participation and in establishing eligibility for enhanced Federal matching in our proposed rules, we included incentives for States to focus their resources on program services and activities that have the most promise to be effective in leading to self-sufficiency.

3) The JOBS program must provide meaningful activities to significant numbers of those eligible to be served. There are two key provisions in our proposed rules which clearly reflect this principle. They are the heart of the JOBS program as we envision it operating in the States--broad program coverage and meaningful participation requirements.

4) States must be provided flexibility to design programs that will meet the needs of their welfare population. While we have encouraged broad program coverage and meaningful participation standards, we have given States broad latitude to determine the types of services they offer anywhere in the State.

5) Extensive coordination of existing education, training, employment, and early childhood programs at all levels of government and in concert with community-based volunteer and business organizations, is critical for any successful JOBS program. Coordination serves two purposes: it maximizes the types of services that are potentially available and the number of individuals that can be served throughout the State.

6) Basic education, which includes literacy, remedial education and education leading to a high school diploma or the equivalent, is one of the most important tools an individual needs to achieve self-sufficiency in today's labor market.

7) Training must be provided for jobs that exist within the community and must have an identifiable occupational goal. Training without a specific job in mind or for extended periods of time may not be the best and quickest path to independence from welfare.

8) Women must be provided with choices of child care providers within reasonable fiscal restraints. Our regulations embody President Bush's philosophy of family choice when deciding among child care options.

9) The program must never lose sight of the fact that it is intended to meet the needs of real people, women and their children, who must be given every possible chance to achieve the dignity of self-sufficiency.

Instead of taking your time to describe further the content of the proposed JOBS rules, I would like to include for the record a summary of the main provisions of the JOBS regulations.

I now wish to address some of the areas in which the comments we have received suggest there are major disagreements with the proposed regulations. It is important to note that, while the areas of disagreement are significant, there are many broad areas of agreement as well. One of our primary tasks over the next few months will be to address these significant concerns before publishing the final JOBS rules.

Without downplaying the significance of the concerns raised by many groups, it is important that they be put into perspective. As The Christian Science Monitor noted in an article on May 18, "some, however, who are sharply critical in public, also say in private that the regulations are on balance, quite good...."

Participation Requirements

On that note, let me begin with the issue most broadly discussed by commenters to date--the approach we have taken on participation requirements in the JOBS program. Before describing the States' specific concerns, I must reiterate one of the key principles I mentioned earlier in my testimony because this lays the framework for our entire approach on participation requirements. That is, we are firmly committed to the principle that participation in the JOBS program, which qualifies a State for enhanced matching, must be meaningful and significant. In order to ensure that this is the case in every State, there must be a minimal Federal standard for what constitutes participation. This approach is consistent with several statements in the conference report which specify that participation is intended to be significant.

States have voiced strong opposition to the following proposed participation requirements. First, States maintain that the participation standards go far beyond legislative intent and are overly restrictive. Of particular concern is the provision that only the mandatory or optional JOBS components, e.g., education activities, job readiness, job skills training, job search, on-the-job training (OJT), work supplementation and community work experience, count as participation. Activities such as assessment and orientation would not count as participating for this purpose.

It is our position that effective participation in the program must be measured primarily by the number of individuals who are successfully provided the work, training, and education skills that can then lead them to find and retain employment. These skills can only be acquired in the program activities included in the participation rate. While orientation and assessment activities are essential, we are concerned that they not become "holding patterns" where recipients languish and lose hope. Also, by limiting our definition of program components counting toward participation, we hope to provide a strong incentive to States to focus their resources on program activities--those activities which have the potential to be the most effective and quickest path to employment.

Second, States argue that the minimum activity levels set out for each program component are too restrictive. For example, in an education component, a participant would be required to be "making satisfactory progress"--a measure of both qualitative and quantitative progress, as defined by the institution. For work program components, job readiness activities, and job skills training, an average hourly requirement, measured monthly, and State-defined qualitative measures are proposed. For example, an individual would be participating if: (1) her specified activity level for work supplementation or OJT is full-time; or (2) her specified activity level is not less than the equivalent of 20 hours per week in job skills training, job readiness activities, community work experience, or group job search.

We received numerous requests from States to permit the definitions of participation in each of the components to be set individually by the States. We did not do so because we believe that, while the legislation intended to offer flexibility to the States in deciding how to design their programs, it also made clear that participation be significant. As stated earlier, this cannot be achieved without a minimum Federal standard.

We believe that the minimum activity levels set in the proposed regulations are both reasonable and achievable. However, as I mentioned earlier, if commenters can suggest a more effective mechanism for ensuring that States are accountable for meaningful participation levels, we would welcome their ideas.

As a final note before leaving the participation provisions, I would like to clarify one issue that has been widely misunderstood by commenters. It was never our intention to require every State to track the actual number of hours each individual participates in a particular activity. What States would have to do is place an individual in an assignment of a specified duration, for example 20 hours a week, and then monitor whether the individual is satisfactorily participating in that assignment. Monitoring satisfactory participation does not mean that States must assure the individual attends every hour of the program.

Child Care Funding

The next major area of concern surrounds what commenters see as an overly restrictive definition of the child care "guarantee".

Five major issues have been raised about the proposed child care provisions: 1) undermining the entitlement nature of the child care guarantee; 2) encouraging States to require individuals to use unpaid, informal care; 3) limiting the child care reimbursement to children under age 13; 4) requiring individuals to submit applications before receiving transitional child care benefits once they leave the AFDC program; and, 5) excluding Federal funding for child care provider development and training.

In the proposed rule we distinguish between the absolute entitlement of employed AFDC recipients and former recipients in transitional status to receive child care benefits, and the conditional entitlement of AFDC recipients in the JOBS program. We believe that the best reading of the Statute is that the State is required to guarantee child care for the latter group to the extent that it requires such individuals to participate in JOBS. Thus, if a State has insufficient resources to pay for child care, or the supply of appropriate child care is insufficient, a State could not require individuals to participate in JOBS.

There has been some confusion and misunderstanding regarding our references to informal child care in the preamble of the proposed rules. Those references were intended to clarify that the most common form of child care used by AFDC recipients, namely informal, unpaid care, continues to be permissible under JOBS if the recipient prefers that arrangement. As I mentioned earlier in my testimony, the proposed regulations would require States to allow recipients to choose among the various forms of child care available as long as the choice is consistent with reasonable fiscal constraints.

With regard to the third concern, we believed that it was important to set some broad Federal limits on child care funding within which States would have a great deal of flexibility in designing their child care system. For example, it would not be appropriate to provide child care for a seventeen year old who did not have special needs. However, exactly where to draw the line is not a simple decision. We chose age 13 because it was one place where the line had recently been drawn--that is, the age of eligibility for the Dependent Care Tax Credit as provided under the Family Support Act.

In proposing to require an application for transitional child care, we were responding to concerns expressed by several States about their inability to administer retroactive eligibility under a less structured system. In addition, the application requirement set up a process whereby a State could assess a family's child care needs and determine appropriate payment levels along with any applicable sliding fee. If we have misinterpreted those State concerns, or if the application process does not address those concerns, then we would be happy to consider other approaches to the transitional child care provision.

And, finally, on restrictions placed on funding to expand the child care supply generally, it is our firm belief that the Family Support Act was never intended to be a child care bill. There are other programs designed specifically for developing child care supply and several other bills are currently being considered to address this issue in Congress.

Reporting Requirements

Third, broad criticism has been advanced concerning the data collection and reporting requirements of JOBS. Many States have complained that the requirements are extremely burdensome and waste valuable resources. However, virtually every requirement is specifically mandated by the Family Support Act or implicitly required by specific conditions contained in the Statute.

The Family Support Act imposes substantial reporting requirements related to the JOBS program and its attendant child care provisions. Section 487(b) of the Social Security Act contains a minimal set of uniform JOBS reporting requirements that may be augmented as the Secretary determines. Section 403 of the Act was amended to require that, among other data elements, a State provide information on the use of child care by AFDC recipients.

We believe that the approach put forward in the proposed rule represents a relatively efficient means for meeting statutory reporting requirements. It also would provide the executive and legislative branches of the Federal government with an extremely useful data base for understanding States' implementation of the JOBS program.

Although we are committed to accurate reporting of all statutorily required data, as indicated in the preamble of the proposed rule, we are very open to alternative approaches.

Basic Literacy Level

Finally, we are aware that several individuals have expressed reservations about our definition of "basic literacy level." Some commenters believe this level is too high, others argue that it is too low, and still others feel that each State should be allowed to adjust the level to provide a more individualized approach.

We proposed that the objective of "education to achieve a basic literacy level" is to provide an individual with the equivalent of successful completion of eighth grade. Our primary reason for doing so, is that we received numerous comments that, unless there were an important programmatic reason for not so doing, definitions should be the same as those already in use. Since the Statute requires JOBS programs to provide basic education, GED and high school activities we believed that adopting the definition used by the Department of Education's Office of Vocational and Adult Education was programmatically appropriate. The proposed rules now provide for the full range of educational activities that the legislation envisioned.

With regard to the definition of "basic literacy level" being too low, we note that the Statute mentions "high school or equivalency" education separately from "basic and remedial education leading to a basic literacy level." Since the GED, or high school equivalency credential, is determined to be at the 12th grade level, it seemed appropriate to set the basic literacy level at a point less than the GED.

As far as the definition being too high, recent research indicates that the new jobs in the United States are requiring higher than ever basic educational skills in literacy and numeracy, and unskilled jobs are shrinking in numbers. In the interest of preparing a JOBS participant for self-sufficiency, we believe that a minimum of an eighth grade literacy level would enhance an individual's ability to achieve independence.

However, given the number and diversity of comments on this provision, we are open to any suggestions on how we might improve our definition.

Conclusion

This strong commitment to reach out for comments and discuss all concerns holds true for the remaining provisions of the proposed rules as well. While I have given some of our arguments for the positions taken in the proposed rules, I do not want to leave this Subcommittee with the impression that we are no longer willing to listen to comments on the proposed regulations. In fact, we are actively seeking ideas and comments from all interested parties within the 60-day comment period which ends on June 19th. We realize the importance of these ideas to strengthen the basic program design outlined in the proposed rules.

These JOBS proposed rules are a first, very positive step in providing the opportunity and resources for needy families with children to obtain the education, training and employment that will help them learn and work their way from welfare to independence. We are extremely proud of these regulations and the effort and coordination that was essential to getting them published on time. We look forward to the constructive comments that I know we will receive from the Congress, the States and other individuals, and will continue to work with you so that we can be responsive to all public comments and issue final rules by the required publication date of October 13, 1989.

Another very exciting process is taking place at the same time that we are developing these final rules. Under the Statute, States have been given the option to begin their JOBS program as early as July 1 of this year. Fifteen States have indicated that they will begin their programs on July 1 and have submitted State JOBS plans for approval by the Secretary. We will be working closely with each of these States during the next few weeks so that welfare recipients can begin to receive some of the benefits from the JOBS program as early as this summer. In addition, we have received over 125 applications from Indian and Alaskan Native Organizations indicating their interest in starting JOBS programs during the next two years.

Further, we believe that careful evaluation of JOBS is a critical Federal and State responsibility. It is essential that accurate information about program effectiveness be developed as soon as possible. Since enactment we have been planning an evaluation which will most efficiently address the complex, important issues associated with the design and conduct of JOBS programs. We have been working in consultation with other agencies as well as with experts from the States and private sector and intend to continue this coordination over the next several years.

We have devoted a great deal of energy and resources into the development of these proposed rules, we are excited about the potential of the JOBS program to assist welfare recipients in becoming self-sufficient, and we plan to continue our efforts to develop an effective and meaningful JOBS program.

I would be pleased to respond to any questions you may have.

SUMMARY OF THE JOBS AND SUPPORTIVE SERVICES PROPOSED RULES

TITLES II AND III OF THE FAMILY SUPPORT ACT OF 1988

PARTICIPATION STANDARDS

Measure of Participation - For purposes of measuring State participation rates, as required by the Statute (7% by FY 1990 up to 20% by FY 1995)

> The participation rate will be measured as a ratio of the number of individuals participating in one of the mandatory or optional JOBS components over the number of non-exempt recipients in a State.

Definition of Participation

> Only activity in one of the mandatory or optional JOBS components will count as participation (i.e., educational activities, such as high school, job readiness, job skills training, job search, OJT, work supplementation, CWEP, or other activity as defined by the State). Other activities, such as orientation and assessment, are not considered participation.
>
> The rule proposes a definition of "participation" that relates only to the question of determining what minimum activity levels in each component a State may count towards meeting the participation rate.
>
>> In an educational component, a participant would be required to be "making satisfactory progress" -- a measure of qualitative and quantitative progress as defined by the institution.
>>
>> For Work Program components, job readiness activities, and job skills training, an average hourly requirement, measured monthly, is proposed. The measure is full time work for OJT and work supplementation, and 20 hours/week for other components.

PROGRAM ADMINISTRATION

State IV-A Agency Administration

> The State IV-A agency must maintain overall responsibility for the design and operation of the program and may not delegate to other than its own officials functions involving discretion in the administration or supervision of the program.
>
> For example, the State IV-A agency may delegate a wide range of activities -- such as orientation, literacy testing, and JOBS activities and services. However, it may not delegate functions such as exemption and priority determinations or dispute resolution and hearings since these involve discretionary judgments.

Statewideness

> The JOBS program must be available in each subdivision of the State where it is feasible to do so, taking into account the number of prospective participants, the local economy, and other relevant factors.
>
> State IV-A agencies will not be required to implement all mandatory and optional components in all political subdivisions in which they operate a JOBS program. Further, differences in the level of component availability will be

permissible.

In reviewing for statewideness, we propose to apply the following criteria:

> First, a "minimal" JOBS program should be available in a number of political subdivisions sufficient to serve 95 percent of adult recipients. A minimal program includes high school or equivalent education, one optional component and information and referral to non-JOBS employment services.
>
> Second, a "complete" JOBS program should be available in all Metropolitan Statistical Areas (MSAs) in the State, as well as in a number of political subdivisions sufficient to serve 75 percent of adult recipients in the State. A complete program includes, but is not limited to, all mandatory and any two optional components.

If a State JOBS program will not be available in the number of political subdivisions sufficient to meet these criteria, a justification must be provided. Included must be two factors specified in the Act: the prospective participants and the local economy. We propose to add one additional item: whether a State IV-A agency will, even with the proposed areas excluded, fully expend all JOBS funds available to it for the period covered by the plan.

Because the statewideness requirement is not effective until October 1, 1992, phased implementation of the program will be permitted.

Coordination and Consultation

In addition to the Statutory provisions designed to assure coordination of the JOBS program and child care with other education, training, and employment programs, such as JTPA, available in a State, the rule requires coordination with Indian Tribes and Alaska Native organizations interested in conducting separate JOBS programs.

Contracting Authority

The Act grants State IV-A agencies broad contracting authority. However, State IV-A agencies must fully utilize all resources otherwise available to serve JOBS participants on a non-reimbursable basis.

In order to assure that contracting of services is neither encouraged nor discouraged, we propose that for the purposes of FFP, State IV-A agencies must segregate costs according to applicable matching rates, as defined at §250.73(b)(1), in any contract or arrangement under the JOBS program. This means that contracted services will qualify for Federal matching funds at the same rate as those services which the State IV-A agency provides directly.

STATE JOBS PLANS

Separate JOBS Plan

It is appropriate to include in a separate JOBS plan the new statutory requirements in section 402(a)(19) of the Act as well as all requirements of title IV-F. We also require that provisions related to child care and other supportive services be included in a separate Supportive Services plan to be submitted with the JOBS plan.

We propose that these plans must be approved by the Secretary prior to a State's implementation, and that the plans must be submitted 45 days prior to planned implementation.

We also propose to issue a preprinted plan soon after publication of the final rules. States with interim plans (those submitted before the publication of final rules) will be required to submit new JOBS and Supportive Service plans 60 days after the issuance of a preprint form. An approved interim plan shall remain in force until action is taken by the Secretary to approve or disapprove the preprint.

The Act requires that States submit a biennial update of the JOBS plan. We propose to consider the biennial update a new plan, which must be submitted for approval 90 days prior to the date it is to become effective, and that all State plans be resubmitted by July 1, 1992 to be effective October 1, 1992.

The Act requires that the State agency submit its JOBS plan to the State Job Training Coordinating Council (SJTCC) 60 days before submission to the Secretary. We propose to require submission of the proposed plan to the State education agency, and that all public and State agency comments on the plan be resolved at the State level.

State Plan Content

We have listed all of the information which we expect to include in the JOBS plan preprint. The preprint will guide States in submitting the JOBS plan, and will expedite review. It will also provide a basis for comparison of State programs.

PARTICIPATION REQUIREMENTS

Individual Participation and Exemptions

All applicants for and recipients of AFDC are required to participate in JOBS program activities unless they are exempt. The exemptions are similar to those under the WIN program, and follow the Statute. We propose to limit the exemption for caring for a child to one parent or caretaker relative per case.

In AFDC-UP cases, the State may require the second parent to participate unless he or she meets another exemption criterion. We propose to allow a State to establish policy on whether the principal earner is eligible for the exemption for caring for a child.

We also require that State IV-A agencies regularly review the appropriateness of exemptions, especially those of a temporary nature. Such review must occur, at a minimum, at each redetermination for AFDC.

Volunteers

The Act requires that States allow applicants for and recipients of AFDC who are exempt to participate in JOBS on a voluntary basis if the program is available in their area and State resources otherwise permit. It also contains a specific requirement that in determining priority of participation within the target groups, the State IV-A agency give first consideration to volunteers.

We interpret the use of the term "volunteer" to include both mandatory and exempt applicants and recipients so that a

State may elect to prioritize among volunteers and, if appropriate, give priority to non-exempt volunteers. For exempt individuals who stop participating in the program without good cause, their priority status to participate in the program is lost as long as other individuals are actively seeking to participate. An individual who is not exempt but enters the program voluntarily is subject to sanction if she stops participating without good cause.

Participation in Education

The State must require the custodial parent under 20 who has not finished high school (or its equivalent) to participate in an appropriate educational activity. The State may require a custodial parent who is age 18 or 19, and required to participate in JOBS, to participate in training or work activities (subject to the 20-hour limit) in lieu of educational activities if one of certain conditions is met. The State may establish criteria for excusing custodial parents under age 18 from the high school attendance requirements. We propose that in such cases State IV-A agencies must provide for assignment to available educational alternatives and that all determinations be made based on an assessment of the individual's circumstances.

Participation for Unemployed Parents

At least one parent in a family must participate for at least 16 hours a week in a work supplementation program, a community work experience program or other work experience program, on-the-job training, or a State-designed work program. If a parent is under age 25 and has not completed high school, the State may require the parent to participate in educational activities directed at attaining a high school diploma (or equivalent) or in another basic education program.

We have defined a minimum level of participation in educational activities for the purpose of determining the general participation rate, and we propose to adopt the same standard for this part of the UP participation requirements. That standard is "making satisfactory progress".

The Act provides that by FY 1994 each State must have 40 percent of its UP caseload participating at least 16 hours per week in a work component. We suggest that States incorporate programs designed to meet these requirements at the time that they implement JOBS (or as soon as they have a UP program). This will prepare States to increase the coverage of their programs on an incremental basis so that they can be at 40 percent by FY 1994.

Sanctions

The Act provides that, for the first failure to participate or accept employment, the sanction last until the failure to comply ceases. For the second failure, the sanction lasts until the failure to comply ceases or 3 months whichever is longer. For any subsequent failure, the sanction lasts until the failure to comply ceases or 6 months whichever is longer.

We propose a definition of ceasing a first failure to comply that allows the State IV-A agency to determine that the individual has actually demonstrated a willingness to participate in the program and, therefore, has ceased her non-compliance.

Good Cause

A sanction may only be imposed if the individual does not have good cause for failing to participate in JOBS or refusing to accept employment. Good cause exists if:

(1) the individual is personally providing care for a child under age 6 and the employment would require such individual to work more than 20 hours per week, or

(2) if child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for the individual to accept employment or enter or continue in the program and such care is not available, or

(3) if accepting a job would result in a net loss of cash income, or

(4) other reasons as defined by the State.

In calculating net loss of cash income, we propose that State IV-A agencies use actual, reasonable work-related expenses.

Conciliation and Fair Hearings

The Act requires that States establish a conciliation procedure for the resolution of disputes involving an individual's participation in the JOBS program. We do not propose to describe specific procedures that all States must adopt.

The State must provide a hearing when the conciliation process does not resolve a dispute. We propose that the State IV-A agency may not contract out to any other agency the responsibility for providing a hearing.

OPERATION OF JOBS PROGRAMS/PROGRAM COMPONENTS

Providing Program Information

The State must provide all AFDC applicants and recipients with information on the JOBS program, including: education, training, and employment opportunities; available supportive services including child care and transitional child care; the State IV-A agency's obligations; and the participant's responsibilities. We also require that the State provide information on securing child support and establishing paternity as well as related requirements.

We permit a State to develop the processes, methods of delivery, and timeframes for providing this information as they phase-in the JOBS program. We propose that a State provide this program information to applicants at the time of application and to recipients at the time of the first redetermination after implementation of JOBS.

The Act requires that after the State has provided a recipient with the information described above, it must, within one month, notify the recipient of the opportunity to indicate her desire to participate in JOBS. We propose to permit the State to make such notification within one month of eligibility determination.

Initial Assessment and Employability Plan

The Act requires the State to conduct an initial assessment of each participant's employability. We give States flexibility by providing that the initial assessment can be conducted through various methods including interviews, testing, counseling, and self-assessment instruments.

The Act also requires the State to develop an employability plan in consultation with the JOBS participant based on the initial assessment. The proposed rule follows the requirements of the Act as to the basic content of the plan, but leaves design and administration of the plan to the State, and specifies that final approval of the employability plan rests with the State, rather than the participant.

Agency-Participant Agreement

The State may require the JOBS participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State. The proposed regulations permit a State IV-A agency to consider the agreement a contract, subject to applicable State laws and regulations and that the option need not be statewide.

Case Management

The Act permits States to assign a case manager to a participant and the participant's family. Under the proposed regulations, a State that chooses to establish a case management system is given flexibility to design its case management services and procedures. Case management does not have to be offered in all political subdivisions that have a JOBS program.

Mandatory Components

The State must offer all of the following components:

Educational Activities - (1) high school education or its equivalent; (2) basic and remedial education to achieve a basic literacy level; and (3) education in English as a second language. Where enrollment in regular high school programs is deemed inappropriate, the State is expected to identify or develop alternative education activities to meet the needs of JOBS participants.

Job Readiness Activities - pre-employment preparation related to removing barriers to employability, excluding activities that would readily fit within the scope of other defined components, such as vocational skills training.

Job Skills Training - pre-employment training in technical job skills. In order to assure that skills training offered through JOBS results in an increase in participants' skills and competencies, we propose to require that qualitative measures for progress be developed for all skills training that is included as a JOBS component.

Job Development and Job Placement - agency activity on behalf of participants to create or discover openings, and to market participants for them. Because this activity is performed by the agency, we propose to exclude this component from the definition of "participation".

Optional Components

The State must also offer at least two of the following four activities in its JOBS program:

(1) group and individual job search;

(2) on-the-job training;

(3) work supplementation; and

(4) community work experience, or other approved work experience program.

The optional components are discussed in more detail, below.

Postsecondary Education

Postsecondary education is an entirely optional matter for the State to address in its JOBS plan, except that we have limited such education to that which is directly related to the fulfillment of an individual's employment goal.

Other Education, Training, and Employment

The Act provides that the Secretary may, if requested by a State, approve additional components not specified in the Act. We have expressly excluded public service employment from the acceptable possibilities.

Self-Initiated Education or Training

The Act gives States the option to allow individuals to continue attendance at an institution of higher education or in a school or course of vocational or technical training if certain conditions are met. The proposed rule requires that a participant: (1) attend the educational activity at least half-time; (2) make "satisfactory progress in such institution, school, or course"; and (3) be enrolled in a course of study that is consistent with her employment goals.

We propose that the State may place restrictions upon the self-initiated postsecondary education. For example, the State IV-A agency might restrict such postsecondary education to a maximum of two years.

Job Search Program

This section of the rule closely follows the Act. In order to qualify as an optional component in which participation counts for the purposes of calculating participation rates, a job search program must be well-structured and include specific activities to be undertaken by the participant or the agency on behalf of the participant.

On-The-Job Training

Our definition of OJT is based on the definition contained in WIN regulations and information provided by the Department of Labor. The participant is hired first by the employer. While engaged in productive work, she is provided training which gives her the knowledge or skills essential to the full and adequate performance of that job.

We propose to limit the rate of reimbursement to employers to no more than an average of 50 percent of the wages paid by the employer to the participant during the period of the OJT. We also to require that qualitative measures for progress be developed for all OJT assignments that are included under JOBS.

Work Supplementation Program

This component allows the State to pay, or "divert," all or part of the AFDC grant to an employer to cover part of the costs of the wages paid to an AFDC recipient who is participating in the program.

We propose to permit States to exempt individuals who are participating in work supplementation from retrospective budgeting requirements and to determine their monthly payments prospectively.

Community Work Experience Program

JOBS generally retains the provisions in the current law, with modifications. The Act allows for training along with actual experience as ways to improve the employability of participants. We interpret this to mean that a State can include an element of training in a work experience position.

FUNDING

JOBS Allocation

Federal funding for JOBS is provided as a capped entitlement. Unlike funds authorized under title IV-A, funds not obligated by the end of the fiscal year cannot be carried over. States will be required to liquidate all obligations incurred during a fiscal year within one year.

Allotment of JOBS Limit of Entitlement

Funding proportional to the quarters the program is in operation in a State in a given fiscal year will be provided. JOBS funding for Puerto Rico, Guam, the Virgin Islands, and American Samoa is described in this section of the proposed rule.

Maintenance of Effort

JOBS funds are not to be used to replace non-Federal funds to pay for education, training, and employment activities which were already in existence prior to a State's implementation of the JOBS program. State and local funding for the purposes of the JOBS program must not be less than expenditures incurred in fiscal year 1986 for education, training, and employment activities dedicated to assist AFDC individuals in becoming self-sufficient.

We are proposing that FFP will not be provided for activities and services that are otherwise available to an AFDC recipient on a non-reimbursable basis.

Matching Rates

The FFP rate for that part of the total JOBS funds comprised of the States' WIN or WIN Demonstration allotment for FY 1987 is 90 percent. This rate may be applied toward any allowable cost of the JOBS program.

Federal matching under the JOBS program is also available at the FMAP for certain costs of the program that exceed a State's WIN or WIN Demonstration allotment. In this category, for the purposes of the JOBS program, the minimum matching rate is 60 percent.

Expenditures which may be claimed in this category are the personnel costs of full-time staff involved in any capacity of the JOBS program, whether programmatically or administratively. This match rate also applies to costs associated with a JOBS participant's involvement in a component of the program, and includes program costs, such as OJT payments to an employer or tuition and fees for GED classes. It also includes the personnel costs of staff and first-line supervisors directly providing component services to participants on less than a full-time basis.

The FFP rate of 50 percent for the JOBS program includes the costs of general administrative activities. This includes personnel costs of staff administering the program on less than a full-time basis and all other non-staff costs not matchable at the program matching rate. Administrative costs include, for example, personnel costs for case managers and program planners not employed full-time for the JOBS program.

Reduced Matching - Participation Rates and Target Population

The Act provides that if, in any fiscal year, a State fails to expend 55 percent of its JOBS allotment on members of the State's target population, the Federal matching rate for all JOBS expenditures for that same year will be reduced to 50 percent. This same penalty is applied if a State fails to meet specified participation rates for fiscal years 1990 through 1995.

JOBS participation rates for the AFDC-UP program are also established by the Act. The penalty for not meeting the participation rates is not defined in the Act. We propose reduction to 50 percent FFP.

UNIFORM DATA COLLECTION REQUIREMENTS

Data Collection Requirements

In order to meet statutory reporting requirements, we are proposing that States be required to submit electronically on an ongoing basis a sample of unaggregated case records of JOBS participants in each month with a minimal set of data elements.

In addition to this sample, States would submit aggregate reports on a quarterly basis of the number of non-exempt AFDC recipients. We also propose that States develop a table of average total unit cost per component and service made available by the State.

State Data Systems Options

We believe it is unlikely that a State can either operate its program effectively or meet the minimum requirements in the Statute without an automated client-based information system. To these ends, we propose to permit various rates of FFP for different parts of the system needed to operate the JOBS program effectively.

Required Case Record Data

We propose a minimum content for the case record that will permit our derivation of all reportable data required by the several parts of the Statute.

OPERATION OF JOBS PROGRAMS BY INDIAN TRIBES AND ALASKA NATIVE ORGANIZATIONS

Application Guidelines

The Act permits Indian Tribes and Alaska Native organizations to apply for direct JOBS funding by April 13,

1989. The Department issued initial application guidelines (FSA-AT-89-11) on February 24,1989. We advised Tribal applicants that since we were still developing Federal policy at that time, we would not disapprove their initial April 13 submittal. The proposed regulations contain additional application documentation requirements to provide the Secretary with a sufficient level of information upon which to base approval of Tribal applications.

Eligibility and Funding

The Act provides that federally recognized Indian Tribes with a reservation and Alaska Native organizations eligible under P.L. 93-638 are eligible for JOBS. The proposed rules permit consortia representing eligible Tribes to apply. Only one application may be approved from each of the 12 geographical regions under the Alaska Claims Settlement Act.

According to the Act the funding formula for Alaska Native organizations is based on the number of adult Alaska Natives on AFDC who reside within the boundaries of the region which the organization represents compared to the total number of adult AFDC recipients in the State of Alaska.

The proposed rules define Tribes. The Tribe will receive JOBS funds based on the number of adult Tribal members on AFDC who reside in the designated service area as compared to the total number of adult AFDC recipients in the State. Tribes or organizations are not required to match Federal JOBS funds.

The regulations propose that State IV-A agencies and the Tribes or organizations have a mutual responsibility to share all available information so a funding level can be calculated. Because exact data on adult Tribal AFDC recipients may be difficult to develop, we strongly encourage States and Tribal agencies to enter into agreements.

Program Administration and Supportive Services

Under the proposed rules, the Tribe or organization must designate an administrative entity responsible for JOBS. This responsibility includes all the requirements under the Statute, unless waived. Certain functions like orientation, JOBS activities and hearings involving JOBS participation issues will be retained by the Tribal designated administrative entity. However, certain other functions such as imposition of sanctions, are retained by the State IV-A agency based on its responsibility to administer the IV-A program. Because of these interrelated functions, we encourage State IV-A agencies and Tribal grantees to enter into agreements to develop necessary referral and operation procedures.

The proposed rules permit the Tribal grantee to begin its program prior to the State's implementation of JOBS. During this interim period, the Tribal grantee may either guarantee necessary child care for its participants or operate its program on an entirely voluntary basis.

The proposed rules require Tribal programs to include the 4 mandatory components and at least one optional component -- job search, work supplementation, CWEP, or a work experience program approved by the Secretary, OJT, or alternative education, training and employment activities as approved by the Secretary.

Tribal grantees must provide necessary work-related supportive services including transportation. However, the

State IV-A agency is responsible for providing necessary child care for Tribal JOBS participants. If the Tribal grantee chooses not to use State child care funds or services, it must provide these funds or services before requiring participation. Thus, after the State has implemented JOBS, the Tribal grantee may not operate an entirely voluntary program.

Waiver Authority

The Act permits the Secretary to waive any JOBS requirements he determines to be inappropriate for Tribal programs. The proposed regulations specify that certain provisions -- relating to State agency administration, State JOBS funding allotment or State matching requirements -- are inappropriate. Tribal entities may request waiver of other requirements which will be considered on a case-by-case basis.

CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

State Plan Requirements

We propose that services provided under sections 301 and 302 of the Statute be covered by a separate Supportive Services plan submitted at the same time as the JOBS plan. We propose that the State Supportive Services plan contain information about child care services, work-related supportive services, and work-related expenses necessary for JOBS.

Eligibility

States would be required to guarantee child care for AFDC recipients to: (1) accept or maintain employment, or (2) participate in an education and training activity if the agency approves the activity and periodically determines that the individual is satisfactorily participating in the activity. (Such education and training is not limited to activities funded under JOBS.)

We propose that the State should assure in its Supportive Services plan that child care provided or claimed for reimbursement is reasonably related to the hours of participation or employment. The State must also assure that sufficient child care will be available to meet the participation rates.

We propose to limit the guarantee of child care to those families with dependent children under 13 or who are physically or mentally incapable of caring for themselves. States would be required to guarantee care for any child who would be required to be in the assistance unit if it were not for the receipt of SSI under title XVI or foster care payments under title IV-E.

States will be permitted to define work-related supportive services and work-related expenses in the State Supportive Services plan. They may include one-time, special work-related expenses which would enable individuals to accept or maintain employment.

Regarding Tribal JOBS programs, we are proposing that the State must provide child care to AFDC applicants and recipients who are served by a JOBS program administered by

Tribal or Alaska Native organizations.

Methods of Providing Child Care and Other Supportive Services

We propose that the State may:
(1) provide the care itself;
(2) arrange care through public or private providers by use of contracts or vouchers;
(3) provide cash or vouchers in advance to the caretaker relative so that the child care costs may be pre-paid;
(4) reimburse the caretaker relative for child care expenses incurred;
(5) arrange with other agencies and community volunteer groups for non-reimbursed care;
(6) use the earned income disregard; or
(7) adopt such other measures as the State IV-A agency deems appropriate.

We propose that States could make supplemental payments for child care costs which exceed the disregard amounts, but are within the established limits.

The proposed rules reflect our desire to allow the caretaker relative to choose the type of child care (center, group family day care, family day care or in-home care), if more than one type is available. The State would be required to pay for the child care services arranged by the individual, even if that would require that it set up an alternative mechanism for payment of such services. The State must also take into account the needs of the child.

Allowable Costs and Matching Rates

FFP is available for payments for the actual cost of child care up to the statewide limit chosen by the State IV-A agency. This statewide limit may be the disregard level ($160) or some higher figure. In no case is FFP available for payments which exceed the applicable local market rate.

Each State must establish local market rates. We are proposing four guidelines which the State IV-A agency would have to follow in establishing these rates:

First, the State would have to base the rates on a representative sample of providers.

Second, we believe the data generally should be collected for areas no greater than political subdivisions.

Third, we are proposing that the local market rates be established at the 75th percentile of the cost of such care.

Finally, we are proposing that local market rates should be determined by type of care, such as center care, group family day care, family day care, and in-home care. Rates should be differentiated by care for infants, toddlers, preschool and school children and whether there are different rates for full-time and part-time care. Where appropriate, rates should reflect reductions in the cost of care for additional children from the same family.

The costs of providing transportation, work-related expenses, and other work-related supportive services are matched at 50 percent and are under the JOBS cap.

FFP is available for child care benefits at the Federal medical assistance percentage and is not subject to the funding cap for JOBS for any State other than Puerto Rico, the Virgin Islands, Guam and American Samoa. Although the Statute does not directly address child care administrative costs, we propose that such costs be matched at the administrative matching rate for AFDC.

Administrative costs for such activities as recruitment and training of providers, licensing, or resource development would not be considered allowable IV-A costs.

Although child care payments are funded under section 403(a) of the Act, they are not IV-A assistance payments as such. For ease of administration, we are proposing that they be subject to many of the same administrative and financial rules as AFDC.

Child Care Standards

Child care must meet current applicable standards of State and local law; however, States are not required to develop new standards. Consistent with congressional intent, we are not proposing to create Federal requirements in this area.

TRANSITIONAL CHILD CARE
(Effective 4/1/90)

State Plan Requirements

We suggest that States use the same methods, except for the income disregard, that it has in place for providing child care during employment, education and training, including JOBS.

By April 1, 1990, where a State has not previously submitted a Supportive Services plan because it has not implemented its JOBS program, the plan for transitional child care would contain the provisions required under transitional care, as well as relevant provisions from the section on child care during eligibility, described above.

Eligibility

Certain AFDC recipients will become eligible for 12 consecutive months of child care. To be eligible for this benefit, the former recipient must have received AFDC in 3 of the prior 6 months. The first month of the period of eligibility is the first month the individual becomes ineligible for AFDC because of one of the following three events:

(1) any increase in earned income;
(2) the loss of the $30 + 1/3 or the $30 disregard because of the expiration of the time limit on its use; or
(3) for AFDC-UP cases only, an increase in the number of hours worked to over 100 hours per month.

We propose to require that the former recipient request this benefit in writing, that the payment of the benefit cannot be for any month prior to the request, and that recipients be notified of their potential eligibility for transitional child care when they become ineligible for AFDC.

Fee Requirement

The State must establish a sliding fee scale for the purpose of calculating a family's contribution for transitional child care. We did not impose specific limits on the fee scales determined by the States, but suggested that we will in the final rule.

We propose to allow the States to set different periods of payment collection for differing levels of payment, and that the State must take appropriate action if a family does not pay its fee. Transitional child care benefits would not be discontinued without due process, and benefits would be continued pending a hearing, if requested.

TECHNICAL AND CONFORMING AMENDMENTS

Technical Amendments

This section includes changes to the existing regulations required by section 202 of the Statute. Included are closeout of the WIN program, changes to the "quarter of work" requirement for AFDC-UP cases, and a number of other changes.

Other Provisions

We are proposing to remove the provision which states that an otherwise eligible child under age 18 may not be denied aid if he fails to attend school or make satisfactory grades. We also propose to prohibit the use of special needs for child care, educational expenses, work-related expenses, and other work-related supportive services that can be paid for under JOBS.

Acting Chairman DOWNEY. Thank you.

Before I begin the questioning, I again want to emphasize my pleasure at the fact that though I don't agree with all of this and we will be hearing throughout this day-long odyssey of hearings a lot of people who have a particular concern, it was done on time and a lot of work went into it. I appreciate that.

Mr. ROLSTON. Thank you.

Acting Chairman DOWNEY. That was the good news. Let's get on with some of the others.

In terms of the proposed rules defining participation, I am afraid that I don't agree that the rigid hourly standards for participation are particularly good. I think that they ignore the needs of the recipients, frankly, and deviate from the idea of individual assessment. Also they create some strange incentives and I want to read through one or two and have you comment on them.

One example is if an exempt person wanted to participate in OJT for 20 hours a week, a State could not count that participation toward the participation requirements.

Why not? Why wouldn't an individual who participated half of the time count as half participation?

What is the possible justification?

Mr. ROLSTON. Our rationale for requiring OJT to be full time is that OJT has traditionally been used for full-time activities. It tends to be an expensive component because it takes a considerable amount of effort to develop OJT slots. Typically, employers and the welfare agencies are looking for full-time slots because they believe that is where they will get the most payoff. We thought that was the most appropriate use of OJT.

I know one of the criticisms we have gotten is that this approach basically excludes individuals who are either exempt or who have young children because of the 20-hour limitation on the participation of individuals with young children.

I think the history of OJT confirms that it tends to be primarily a voluntary program. No one wants to spend resources to develop slots and send people out to them who don't want to be there. So I think that it is fairly unlikely that a State would be unable to require somebody to meet this standard because of the 20-hour limitation.

Acting Chairman DOWNEY. Nice try, but that still doesn't answer my question.

Why wouldn't you want to have somebody count as half if they wanted to do it and if the State agency or county decided to provide this option? Why wouldn't you provide the flexibility to count at least as half of participation?

Mr. ROLSTON. We certainly will consider that suggestion. We are not ruling it out. I am just giving you the rationale for why we proposed the full-time definition.

Acting Chairman DOWNEY. Let me go through another example.

In CWEP, you count 20 hours as participation while it would take 40 hours of OJT or work supplementation to count toward participation. It would seem you are violating one of your own principles, that of State flexibility. And I think you would in this instance be encouraging one form of participation over another.

Can you give us your justification for that?

Mr. Rolston. I think the justification would be the resources it takes to develop OJT and what we think would be a reasonable return. As I said, I don't think we are intending to push people towards CWEP and we would be glad to look at that suggestion.

Acting Chairman Downey. As I take a look at these regulations, and sadly I have to—not sadly in the sense it would be to spend too much time on it. It is important in understanding the process you went through and what we wrote to read through them. It seems to me one of the things the previous administration, and certainly this administration has advocated over a long period of time is this notion of flexibility, of the States being able to do things.

We have this wonderful argument. In some instances you say I want the States to be flexible. When it comes to a minimum benefit, I want a national standard, you want a State standard. Only when it comes to participation rates does the Government become interested in applying an even standard.

I don't believe that these participation rates are consistent with what has been a fairly consistent tone of the administration for State flexibility and I would like you to just deal with that generic question. Do you believe these regulations provide the sort of flexibility the States need to implement this program properly?

Mr. Rolston. I think there are two points which need to be addressed. One has to do with the issue of the need for some minimum Federal standard. We believe very strongly that there needs to be some kind of minimum standard that participation should not be—given the legislative history—a trip down to the shopping center to look for a job. So there must be some minimum Federal standard.

The second point has to do with the level at which the standard is set.

We are not absolutely wedded to this standard, but we don't think it is unreasonable given the number of individuals it needs to apply to.

Acting Chairman Downey. I will not trespass on my own time. Clay.

Mr. Shaw. In the Senate hearing, I believe after the administration's testimony, some witnesses asserted that HHS was trying to thwart the will of the Congress by drawing up regulations that undermine the Family Support Act. Do you agree with this assessment?

Mr. Rolston. Well, I think that really is an unfair charge. There are clearly areas where there are significant disagreements. There were significant disagreements during the last 3 years.

The Family Support Act was a heavily negotiated bill and I don't think with the issuance of regulations, one would expect they would just simply disappear. We made an honest effort to seriously implement the act and I can tell you Secretary Sullivan and the Bush administration are committed to giving this program a chance to work.

Mr. Shaw. What were your major goals or the major principles you followed in putting together the regulations?

Mr. Rolston. Well, there are a number of them, I won't go through all of them, but certainly we thought that significant participation was important. We felt that providing options to individuals for child care was very important.

We believe that the educational components of the bill were extremely important. We placed an emphasis especially on education for young custodial participants.

There are a number of goals that we tried to incorporate, and we provided various mechanisms for trying to achieve those goals.

Mr. SHAW. There has been a lot of talk about the regulations undermining the absolute guarantee to child care provided by the statute, yet it appears to us the statute is ambiguous. Can you tell us your view of what it means to guarantee day care and how the regulations do or do not ensure that the States execute this guarantee?

Mr. ROLSTON. Our reading of the statute, as we tried to explain in the preamble, perhaps not entirely successfully given the amount of misunderstanding that seems to have occurred, is that there is an absolute entitlement for individuals who are either employed or in the transition status to receive necessary child care. For individuals who are in the JOBS Program, we described the entitlement to child care as being a conditional one.

What we mean is that any individual who is required to participate in JOBS and needs child care in order to do so must be provided that care. There is certainly no suggestion that the individuals should be required to participate if the States don't have the resources to provide child care for them.

I might add, by the way, I talked to a member of your staff who has had discussions with the American Law Division at the Congressional Research Service and he has assured me that is what their view also as to the best reading of the statute.

Mr. SHAW. I want to go back and pick up on something you said about available resources. What would be the effect of greatly diminishing the 20-hour requirement under the regulations?

Mr. ROLSTON. Well, I think if it were greatly diminished, we would see a number of States that would likely not make any more serious effort than they have made to date to involve significant numbers of individuals at significant participation levels. One clear guidance of the legislative history is that participation should be significant, that it should not be a token effort, and that is what we have tried to ensure.

Mr. SHAW. Thank you, Mr. Chairman.

Acting Chairman DOWNEY. Mr. Andrews.

Mr. ANDREWS. Thank you very much, Mr. Chairman.

I would like to go back to this 20 hour standard. I am sorry I did not hear your testimony. But explain to me, give me just your thoughts—it seems to me, just in briefly going over this material, that some people might need more than 20 hours, some people might need less.

Doesn't that sound reasonable to you?

Mr. ROLSTON. Yes.

Mr. ANDREWS. I mean, there ought to be some flexibility.

Mr. ROLSTON. Well, I think there is flexibility, and there are a couple of points that need to be made. First of all, the 20 hours is only for certain components. For educational components, for example, the status is making satisfactory progress. It is not a 20 hour minimum for each component.

Mr. ANDREWS. If someone is required to work 20 hours and they work 10, how are they treated?

Mr. ROLSTON. If they participated in the JOBS Program for 10 hours in a component that required 20 hours, it would not be counted as participation towards the participation standard which authorizes enhanced matching.

The State could involve individuals in activities that are less than 20 hours and have them paid for, but the question is would it count towards the participation standard?

Mr. ANDREWS. Yes. I am asking you that. Wouldn't it make sense to count that toward the participation?

Mr. ROLSTON. Well, it depends a lot on, I suppose, where you are coming from. Part of what we view——

Mr. ANDREWS. What do you mean by that, where you are coming from?

Mr. ROLSTON. I will try to explain it to you. In part, we thought the participation standards were reasonably modest compared to the overall size of the number of adults on AFDC.

For example, there are 4 million adults on AFDC in a given month. In 1990 and 1991 there is a 70 percent standard—a 7 percent standard, pardon me. That means that in a given month, about 140,000 individuals need to be active. These are roughly CBO numbers, give or take a few thousand; 140,000 individuals out of 4 million in a given month who are active on a half-time basis does not seem to us to be an unreasonable standard.

I will emphasize there are other alternatives we would be willing to examine. We actually discussed with States other alternatives, for example, averaging a 10-hour person with a 30-hour person. They told us they didn't want any Federal standard at all but if one were to be imposed, they would rather have something that was more informal rather than a method like averaging.

Mr. ANDREWS. All right. Let me ask you a final question.

It came up in the Senate debate, the Senate discussions over in the Finance Committee of taking the 20-hour work week and sort of viewing that as sort of like if you had a 40-hour work week, 20 hours would be half-time, 10 hours would be quarter-time. Would you be opposed to that?

Mr. ROLSTON. At this point, I don't think we are opposed to any potential solution that would guarantee that the participation be significant and meaningful. As I said in my testimony, we are open to other alternatives. We considered other alternatives. The standard we have put forward has been criticized as being unreasonable.

We don't think it is unreasonable, but there may be better solutions to the problem and we certainly are willing to entertain them.

Mr. ANDREWS. Thank you.

Acting Chairman DOWNEY. Mrs. Johnson.

Mrs. JOHNSON. Thank you very much. I am sorry I also was not able to be here during your presentation, but there are several issues you raised that I think are critical. It is my understanding you are requiring recipients to participate 20 hours a week, but you are not specifying the number of weeks that a program must last; is that correct?

Mr. ROLSTON. Right. It is really a monthly number that averages 20 hours a week. It could vary by the week.

Mrs. JOHNSON. What is the definition of participation during these 20 hours? Does the definition of participation include only work training or work readiness training, too, or do you accept participation in a high school equivalency program too?

Mr. ROLSTON. All of those things could count toward the 20 hour standard. Actually, if somebody were solely in a high school equivalency program, then they would only have to meet the requirements of the institution which might be fewer than 20 hours a week. For educational activities, the 20-hour standard doesn't apply.

Mrs. JOHNSON. The goal of the welfare reform bill was to break the cycle of dependency. You are saying that people if they are going to get off welfare, ought to be involved in the JOBS Program at least half time with day care provided.

At least half-time participation is important to set goals, become educated, and in my estimation, regain not just work skills or educational achievements, but also self-concept, which is very important in achieving independence.

I personally feel having lived through many, many years in my life where I felt the paralysis that mothers on welfare must feel, the isolation of caring for small children and being closed off from the community, I think 20 hours a week is necessary.

I visited a training program recently and the young mothers told me that it was so great to be together to have support, to be able to talk out some of their problems and that support, communication, and being with people was every bit as important as education and training.

I would not want to see any reduction in the 20-hour average. States do need flexibility because there are situations where the 20 hour requirement can not be met to the letter of the law but I feel if you are going to help young women find out who they are, what their abilities are and how to manage so they are in charge and they have the power to change their lives, they have a right to 20 hours a week of a varied and substantial program of education, job training and personal development in the many forms it can be made available.

In this new setting that gave these young women a broader array of support services, they were for the first time really finding themselves.

So I think we would do women a disadvantage to put them out there for a piddling number of hours. I think they have a right to support services and a good program that is at least half-time. You are asking them to do something that a lot of people can't do individually by themselves, that is take responsibility for earning a living and raising a family.

I really commend you on your 20-hour standard. I think it is certainly something I wanted to see in the bill. Also, there are a couple of questions I wanted to ask you.

What exactly did the CBO study say about the burden on States of the 20-hour requirement?

Mr. ROLSTON. I am not aware of anything in the CBO study that is directly on target in terms of the 20-hour requirement.

Mrs. JOHNSON. I am sorry it was on the more general issue of participation standards.

Mr. ROLSTON. Yes, they did address participation standards.

Basically what CBO did, is describe the methodology that they used to cost out the bill. One of the statements that has been made is that the CBO study shows that participation rates will have to be three times higher than what is actually in the statute.

I don't mean to fault CBO in terms of how they did their cost estimates, but there are a lot of assumptions in there that one could question.

Mrs. JOHNSON. Like?

Mr. ROLSTON. For example, they assume the average participation is roughly about 3 months or a little bit more in the program. They base that on programs from the early and middle eighties.

Our view is that JOBS is going to change this pattern. It is going to introduce longer term activities, educational activities, for example. Somebody in high school for the entire year counts as a participant all year. They are not three different people, four different people moving in and out.

Mrs. JOHNSON. Is it based more on a CETA-type program rather than long-term involvement?

Mr. ROLSTON. I don't know if it is so much based on CETA, as earlier predecessors to JOBS welfare to work programs that existed under current law.

Mrs. JOHNSON. I see, Mr. Chairman, that my light has gone on, but if there is time I would like to come back to the issue of child care requirements.

Acting Chairman DOWNEY. Yes.

Mr. SUNDQUIST. No questions.

Acting Chairman DOWNEY. Mr. Pease.

Mr. PEASE. No questions.

Acting Chairman DOWNEY. I have one question. And then Mrs. Johnson will inquire one more time.

One of the later witnesses will testify that one of your conforming and technical amendments might allow a State to deny AFDC benefits to a child under 18 because of failure to make satisfactory grades.

Is that true?

Mr. ROLSTON. As written, I think it might do that. It was not our intention to do that. We were attempting to make a conforming change for young custodial parents, but it looks like we went further than we intended.

Acting Chairman DOWNEY. I think so. You will be undoing that?

Mr. ROLSTON. I assume so.

Acting Chairman DOWNEY. There is a—I will leave you with one admonition before Mrs. Johnson inquires, and that is from my favorite rock musician, Sting, who wrote for the Police a wonderful song and one of the phrases went "every step you take, every move you make, we will be watching you."

Mr. ROLSTON. We are pleased to have the attention, Mr. Chairman.

Acting Chairman DOWNEY. Mrs. Johnson.

Mrs. JOHNSON. And in that regard, it was our intention in the welfare reform bill to provide an absolute guarantee of child care services.

In the regulations, do you leave that responsibility entirely to States and the definition of what kind of services can be required or provided?

Mr. ROLSTON. The statute allows for States to provide child care through a number of different mechanisms that are basically up to them—providing reimbursement, providing the care directly—half a dozen different approaches.

We left open to the States to choose the methods. They have to at least use the earned income disregard for people with earnings. We also provided that a State in choosing these methods could not limit a parent from finding their own care, as long as it was within the local market rate and met other requirements of the statute. The State must have some means of paying for that care.

So we think we have left the States with the kind of flexibility the statute called for, but we have also provided the broadest possible options for individuals in terms of where they leave their children.

Mrs. JOHNSON. And the providers must meet State standards?

Mr. ROLSTON. That is correct.

Mrs. JOHNSON. Thank you.

Mr. PEASE [presiding]. Thanks, Mrs. Johnson.

Thank you very much, Mr. Rolston, we appreciate your testimony and look forward to working with you.

Our next panel consists of the National Governors' Association, the American Public Welfare Association, and the Manpower Demonstration Research Corp. Representing the National Governors' Association, Mr. Scheppach, executive director.

STATEMENT OF RAYMOND C. SCHEPPACH, EXECUTIVE DIRECTOR, NATIONAL GOVERNORS' ASSOCIATION

Mr. SCHEPPACH. Thank you, Mr. Chairman.

I appreciate the opportunity to appear before you today to discuss the proposed regulations to implement the recently enacted welfare reform legislation. Governor Thompson of Wisconsin apologizes that he was unable to come today, but State business precluded him from being able to join you.

I would like to provide my full statement for the record and take a few minutes to summarize it briefly.

Mr. Chairman, we succeeded on welfare reform legislation because you and your colleagues were willing to make a commitment to change the welfare system from one that encouraged dependency to one that encouraged independence. This legislation represents one of the most significant reforms of public assistance in half a century. Unfortunately, it seems that this historic reform of the American welfare system is about to run into major problems through the regulatory process.

Generally Governors do not get involved in proposed regulations for Federal legislation. However, due both to the importance of this issue to Governors, as well as the magnitude of the problems created by the proposed regulation, Governors are extremely concerned and involved in this issue today.

State officials have taken the consultation process with HHS very seriously. We called our first meeting of 120 State officials from 32 States back in February and communicated our recommendations to HHS at that time. Two weeks ago we had an additional meeting at which 38 States were represented to comment on the proposed regulations. The agency attended this meeting, and we will formally communicate our concerns to the Secretary of HHS within the next 2 weeks.

We cannot criticize the process. HHS has gone to great lengths to include the States in a discussion of how the regulations would be drawn. We do, however, have significant problems with a number of regulations because they would hamper, rather than enhance, State efforts to move welfare clients toward independence.

The first issue of concern is the arbitrary methodology proposed for computing participation rates. There are two problems: they would limit the kinds of activities an individual can participate in; second, they impose arbitrary hourly requirements for various JOBS Program components. For example, the activities that involve assessment of individualized employment plans do not count toward participation.

But in the States where we have been busy changing the welfare system, we have learned that thorough assessment is critical to an effective program. Inappropriate placement wastes time and money and discourages clients from working toward self sufficiency. Artificial minimum requirements are a problem. Why should something that takes 15 hours be increased by another 5 hours simply because the regulation requires 20 hours?

We also question the unilateral decision that participation rates are minimum requirements. This is not what we agreed to in the legislation.

Mr. Chairman, there are a number of other issues, including definition of what constitutes an appropriate statewide program. Overall, however, the cumulative impact of a number of regulations will substantially reduce the innovation and cost effectiveness of these programs. Of particular concern to us is that we have programs up and running in about 26 States, and running efficiently. Almost all of those programs will have to be changed now eventually to be consistent with the Federal rules and regulations.

This was not the intent of the Congress or the Nation's Governors, and, therefore, we would appreciate your help in convincing the administration that the proposed regulations need to be substantially revised. Mr. Chairman, I will be happy to answer any questions.

Acting Chairman DOWNEY. Thank you.

[The statement of Raymond C. Scheppach follows:]

STATEMENT OF RAYMOND C. SCHEPPACH, EXECUTIVE DIRECTOR, NATIONAL GOVERNORS' ASSOCIATION

Good afternoon, Mr. Chairman.

I appreciate the opportunity to appear before you today to discuss the proposed regulations for implementing the recently enacted welfare reform legislation. Clearly, this legislation represents the most significant reform of public assistance in half a century.

We succeeded, Mr. Chairman, because you and your colleagues were unwilling to allow the great need for change to be forgotten or ignored. Unfortunately, it seems now that the historic reform of the American welfare system is about to run into major problems through the regulatory process.

This undertaking, which was supported by the nation's Governors, which won passage in both houses of Congress, and which was signed into law by the President last year, apparently has not met with the approval of those responsible for drafting regulations to implement the Family Support Act of 1988. In fact, the draft regulations published by the Department of Health and Human Services recently seem designed expressly to prohibit the kind of daring and innovative reforms at the state level that served as the model for the federal law. Why? Because the department is afraid the states will employ underhanded methods and sleight of hand to obtain federal funds. As they put it, they're afraid the states will "game" the program.

Having failed to convince the Congress, the White House, or the Governors of the fifty states to agree to unrealistic participation rates while the bill was being negotiated, they are using the regulations to raise the rates unilaterally. They are systematically eliminating the flexibility so important to the states in developing innovative approaches to welfare reform--and to helping people break free of welfare dependency once and for all.

As this committee knows, the National Governors' Association worked diligently with the Congress and the White House to craft a law that encompassed the best ideas and innovations developed by the states about how to move our welfare clients from dependency to self-sufficiency. The central tenet of NGA policy, and one which is clearly encompassed in the Family Support Act, is that if we are going to reduce childhood poverty, increase the preparedness of our current and future workforce, and secure our common economic future, then we must transform this income maintenance system, with its minor work component, into a program that focuses on education, training, and employment for our most disadvantaged citizens.

Our goal and our vision of how to reach that goal have not changed. But the path to that goal is being strewn with obstacles, in the form of the recently published proposed regulations for the Jobs Opportunities and Basic Skills Training Program, or JOBS, and related support services of the Family Support Act.

The final shape of these regulations is of critical concern to the Governors and their states. The regulations can either provide us with the opportunity to run our programs in an efficient and effective way--or they can entangle the states in bureaucratic procedures and concerns that have nothing to do with our basic goal, which is to create a diverse and innovative system of welfare programs across the nation that will encourage self-sufficiency.

Certainly the Department of Health and Human Services is to be commended for meeting an extremely tight deadline in preparing the proposed regulations.

And, in fact, the department has gone to great lengths to include the states in the discussion of how the regulations will be drawn. Unfortunately, the department doesn't seem to have been listening--to the states, or to the Governors.

Consultation Process

Let me take a moment to describe our efforts so far. In February, the National Governors' Association, in conjunction with the American Public Welfare Association, convened a meeting at which more than 120 state officials representing 32 states spent a full day discussing the act and working toward consensus positions on a number of critical areas in the new law.

The recommendations of the states were reported to Secretary Sullivan, the Family Support Administration, the White House, and members of both the Senate Finance Committee and the House Ways and Means Committee.

Following the February meeting, staff from NGA and APWA met informally with staff from the Family Support Administration to further discuss and negotiate state concerns about the need for sufficient flexibility in the regulations to allow states to augment the creative and effective programs already in place around the country.

Last week, NGA and APWA held a second meeting, attended by 38 states, where the department explained its rationale for the proposed regulations and solicited our reactions.

As I'm sure you realize, this kind of "hands-on" involvement in the regulatory process is virtually unprecedented for the Governors, and reflects our continuing commitment to the successful implementation of the act. But it should come as no surprise in light of our belief that the Family Support Act offers the framework to make our welfare system a means to provide meaningful opportunities for the disadvantaged and to empower them to become self-sufficient.

Problems

Viewed from that perspective, the proposed regulations fall well short of our goals. In fact, many of the proposed regulations hamper, rather than enhance, state efforts to move their welfare clients toward independence. The proposed rules will actually force significant changes in current programs--often the very programs that served as the model for the law itself.

The first issue of concern to the National Governors' Association is the odious and arbitrary methodology proposed for computing participation rates.

There are two significant problem areas. First, they would limit the kinds of activities an individual can participate in if they are to be counted in a state's participation rate. Second, they impose arbitrary hourly requirements for various JOBS program components--requirements that will undermine the goal of individualized services for clients.

For instance, the proposed regulations do not allow the states to count as participation those activities that involve assessment of client needs and development of individualized employability plans. But in the states, where we have been busy changing the welfare system and making it more responsive to people's needs, we have learned that a thorough assessment of clients' strengths and deficiencies is essential to developing appropriate and efficient services choices. A client who reads at a third-grade level is not ready for GED training, and a client with a substance abuse problem will not be successful in a job-search program. Inappropriate placements waste time and money and often discourage clients from working toward self-sufficiency; comprehensive assessment is the means of uncovering clients' needs. In other words, the proposed regulations almost encourage the states to use a cookie cutter approach to programs, without regard to clients' needs. That isn't what we were fighting for when we set out to change the welfare system. The Governors believe that if assessment is a vital part of this effort, then it must be recognized as such and those men and women who have entered that phase of the program be counted as well.

The time spent in developing individualized employability plans should also be counted for participation rates, because this is key to the success of the client. There is general agreement that the client must be a full partner in this process, that it requires a significant commitment of time and energy to develop a workable plan to move a client and her family from welfare dependence to economic independence. The proposed regulations are a disincentive to this all-important planning stage and should be eliminated. Nobody wants clients to be idle. But engaging a welfare mother in her own future and the future of her family, showing her the possibility of financial independence, and convincing her to buy in to the hard work that transition will entail--isn't that what we were talking about when we talked about welfare reform?

We are also concerned about artificial minimum hourly requirements proposed for various JOBS components by the department. Not to put too fine a point on the question, but if something takes 15 hours, why should it be increased by another five hours simply because the regulations require 20 hours?

The states believe that the unanticipated consequences of hourly requirements for individual components of JOBS activities will undermine the intent of the law to provide individualized, intensive services to the most severely disadvantaged in our population. Arbitrary hourly requirements destroy the central purpose of individualized employability plans, plans which are intended to tailor services to build on client strengths, overcome client weaknesses, and move clients toward permanent self-sufficiency. Hourly requirements will force states to make service choices that are inappropriate and economically wasteful, and will restrict service options by imposing arbitrary hourly requirements unrelated to successful outcomes for participants. In addition, these requirements will reduce the number of individuals that can be served and the intensity of services they can receive by forcing the states to spend more money on each service component than may be warranted in an individual client's case.

I would like to think, Mr. Chairman, that the men and women in any state who are responsible for our welfare and employment and training programs--because they are professionals--can decide whether an activity is successful after 13 hours, or 17 hours, or 35 hours, and that arbitrary hourly minimums imposed long-distance are ill-considered.

What, for instance, happens to the JTPA program, which is providing 15 hours of training? Should the federal government second guess the judgment of the skilled professionals who run JTPA and other employment-related programs? Just last week the Department of Labor made it clear that the administration wants better coordination of JTPA with welfare activities.

But I wonder, is that goal brought nearer by insisting that a JTPA program be expanded needlessly...just to comply with regulations?

On the basis of potential additional child care costs and added pressure on scarce child care resources alone, this proposed requirement deserves to be rejected.

The only approach that captures the legislative intent of individualized services is to allow states to define what constitutes participation for an individual, in accordance with their personalized employability plan.

There is one other issue regarding participation rates we need to address--the unilateral decision by the department that the participation rates of 7 percent in 1990 increasing up to 20 percent in 1995 are **minimal** requirements. Mr. Chairman, that simply is not what the Congress and the Governors and the White House agreed to. The fact is, the department pushed for higher participation rates during the drafting of the bill, and, having failed to prevail in the legislative process, seems intent on prevailing through regulations.

A recent analysis by the Congressional Budget Office estimates that states will have to serve three times those percentages to avoid losing the higher match rate. And analyses in individual states indicate that the CBO report underestimated the number of persons who will have to be served to achieve the participation rates. These demands for high numbers of participants reduce the intensity of services that can be offered to clients.

Combined with the restrictive regulations on how clients are counted, we are facing great obstacles even before we begin the process of reform and change envisioned by the Family Support Act.

Let me add one other observation about the draft regulations. The proposed regulations would eliminate the option for states to provide child care and other work-related supportive services through special needs determinations. This restriction may limit the ability of some recipients to participate in the JOBS program activities, and that concerns the Governors.

I have focused today on broad issues that penetrate the core of the reform proposals. The states have raised numerous other areas where the proposed regulations fall short of legislative intent or impede states' ability to perform their responsibilities under the act. Many of these issues are discussed in the testimony submitted by the American Public Welfare Association; APWA and NGA will continue to pursue avenues for changing the proposed rules through consultation with HHS officials.

Mr. Chairman, I am distressed by the pervasive sense that the department drafted some of these regulations, particularly those related to the computation of participation rates, with the purpose of eliminating perceived "gaming" of the system by the states in order to receive federal reimbursement for client activities that are not necessarily helpful. I reject the notion that states intend to play games. It was the states, through their Governors, that led the fight for welfare reform. It was in the states where innovation and creativity were injected into a moribund system, sometimes only by pushing hard for change. It is in the states where the effects of poverty and the cycle of welfare dependency can be seen, where lives are lost to hopelessness, and where our employers decry the lack of skilled workers. We must develop regulations that allow states to administer a cost-effective program.

I will be pleased to answer any questions you might have.

Acting Chairman DOWNEY. Next for the American Public Welfare Association, Cesar Perales.

STATEMENT OF CESAR A. PERALES, CHAIR, NATIONAL COUNCIL OF STATE HUMAN SERVICE ADMINISTRATORS, AMERICAN PUBLIC WELFARE ASSOCIATION, AND COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

Mr. PERALES. Thank you, Mr. Chairman, and members of the subcommittee. I am Cesar Perales, commissioner of the New York State Department of Social Services, and I currently chair the National Council of State Human Services Administrators.

I am here today to highlight some of the immediate concerns of the State Human Service Commissioner who will have to administer the program. Resulting from the meeting that Mr. Scheppach described, we have had several meetings both with representatives of Governors' offices, as well as State Human Service Commissioners.

Let me first say the Department of Health and Human Services is to be commended for meeting the deadline for issuing the proposed regulations as set forth in the act and for doing so despite the complexity of the law and the change in administrations.

As you know, the JOBS Program is designed to assist welfare recipients gain the education skills and opportunities needed to leave AFDC and enter into employment. To meet this goal, States must provide appropriate education, training and employment activities.

Let me just say that rather than repeat some of the things that have already been said, let me comment very quickly on a couple of the issues that have been raised. I am particularly concerned about participation rates, those of us who administer the program are particularly concerned.

Let me respond to the issue raised by Mrs. Johnson. While I would concur that it would be wonderful if we could always have at least 20 hours of involvement on the part of every participant, quite frankly those of us who are administering programs have successfully enrolled many participants in programs in which the job skills training takes perhaps 15 hours a week. Some other program may take 18 hours a week. And what this would require basically is that either we go to that contractor we have hired to deliver the job skills training and offer to pay them more to extend the training or to find some other activity in which to involve that individual.

Now, that is not something that we are against, but it obviously would require an enormous effort on the part of the States as they try to meet these participation requirements, and that is why we object to it. We are happy, if there is an educational component—rather a job skills development program that takes less than 20 hours and it is effective, I think we ought to have the flexibility. There may be others that are going to take more than 20 hours. It is the lack of flexibility, and in our own experience many of these programs take less than 20 hours: That concerns us.

There are a couple other things that relate to this that makes it difficult for us to get started, and one of them has to do with the determination of market rates for child care which I know Mrs. Johnson alluded to. We are all interested in that.

The whole question of setting market rates can be very, very difficult in many States. The use of political subdivisions as the basis for setting market rates is going to be very difficult for us. Even in New York, which we think of as a great urban State, we have counties, political subdivisions where there are very few day care providers. To have to set the market rates in each political subdivision is going to be difficult. It will skew rates, and we would much prefer to have the flexibility to perhaps regionalize the basis upon which we would set the rate we ought to pay for child care, so child care truly does become available to everyone.

Another example of where we are having difficulty, given lack of flexibility, relates to the elimination of the use of special needs funding. Traditionally, we have used the regular welfare stream to pay for things like transportation, lunch that someone gets when they are engaged in these activities. Under the JOBS regulations, we would have to use only the JOBS appropriation for that purpose. And as you know, this is a capped appropriation.

We in New York are assuming that it would make it less possible for us to serve as many people as we would like if we could not continue to rely on the use of the traditional welfare funding stream to pay for such things as transportation, lunches, even uniforms, tools, books that people need to participate in job training, and again not to allow us to keep that as part of our State plan limits our flexibility.

These are just some examples of how the entire tone of the regulations just limits our ability to do the things that we have learned to do well, and I think the entire welfare reform movement that emanated from the Congress, I think, was based to a great extent on the experience of a number of States, and now we are being asked to change things and limit the way we do them.

Thank you.

Mr. **Pease** [presiding]. Thank you.

[The statement of Cesar A. Perales follows:]

STATEMENT OF CESAR A. PERALES, COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, AND CHAIR, NATIONAL COUNCIL OF STATE HUMAN SERVICE ADMINISTRATORS, AMERICAN PUBLIC WELFARE ASSOCIATION

Good morning Congressman Downey and members of the Subcommittee. I am Cesar Perales, commissioner of the New York State Department of Social Services and chair of the American Public Welfare Association's National Council of State Human Service Administrators. As you know, APWA is a 59-year-old nonprofit, bipartisan organization representing the 50 state human service departments, 800 local public welfare agencies, and more than 5,000 individuals concerned with social welfare policy and practice. APWA advocates sound, effective, and compassionate social welfare policy at the national, state, and local levels, and brings state policy leadership to bear in national decision-making.

I am here today to represent the views of state human service commissioners on the recently-published proposed regulations for the Job Opportunities and Basic Skills Training Program (JOBS) and related supportive services of the Family Support Act of 1988 (P.L. 100-485).

Let me first say that the Department of Health and Human Services is to be commended for meeting the deadline for issuing the proposed regulations as set forth in the Act, and for doing so despite the complexity of the law and the change in administrations. As you are well aware, Congress clearly intended that JOBS program be implemented by the states in a timely and efficient manner, and the availability of the proposed regulations will greatly assist in that task.

As this subcommittee knows, APWA played a key role in the development and enactment of the Family Support Act. Four years ago state human service commissioners, through APWA, began our own welfare reform policy development effort. Our report, **One Child in Four**, contained our recommendations for comprehensive reform of the nation's welfare system. The report highlighted the critical link between childhood poverty and family self-sufficiency. Commissioners understood, as this subcommittee has understood, that promoting a family's self-sufficiency through comprehensive education and training efforts leading to meaningful employment may well be the single most important public policy action to reduce poverty among children.

In an unprecedented move, the nation's governors also made welfare reform a policy priority. Through the National Governors' Association (NGA), they adopted a policy statement mirroring the major welfare reform recommendations of their human service commissioners. The Family Support Act of 1988 contains many of those recommendations, and establishes a framework for changing what has historically been an income maintenance system into a process that promotes the self-sufficiency of families receiving welfare. It sets out the education, training, and employment activities and support services necessary for families to make the transition from dependency to self-reliance.

Throughout the debate in the 100th Congress APWA advocacy was bipartisan and broadly representative of the views of the states. That continues today. My colleagues and I are closely involved in the regulatory process. Within our states, we are working to implement and refine the new JOBS programs and related support services under the Act.

In February, APWA and NGA convened a meeting of human service agency and governors' office staff to review the provisions of the Act. More than 120 officials from 32 states attended. They began an ongoing process of exchanging ideas and developing consistent views, where possible, on regulations governing the programs and activities called for in the Act, including the JOBS program, child support, and child care. The recommendations of the states on these issues were compiled into a report which was shared with Secretary Sullivan and staff of the Family Support Administration as well as members of the Senate Finance Committee. On May 9 and 10, APWA and NGA held another meeting attended by representatives from 35 states to review the proposed regulations in light of our earlier recommendations.

These discussions highlighted several concerns states share with regard to the proposed regulations. These provisions, if included in the final regulations, would adversely affect the design and operation of state JOBS programs and, therefore, the goal of strong, self-sufficient families. APWA and NGA are developing detailed comments on the proposed regulations for submission to HHS and we will share those comments with you as well. Today, I would like to highlight some of our immediate and critical concerns with the regulations as proposed for the JOBS program and child care.

THE JOBS PROGRAM

As you will recall, the JOBS program is designed to assist welfare recipients--particularly those recipients who have been on AFDC for long periods of time and those who are at risk of long-term dependency--gain the education, skills, and opportunities needed to leave AFDC and enter into employment. For the first time, the Family Support Act mandates that states offer a wide range of education, training, and employment activities in the JOBS programs, and provides important resources for this purpose.

A key feature of the JOBS program is the requirement that states provide appropriate education, training, and employment activities specifically tailored to the abilities and needs of individual participants. As recommended by APWA and NGA, this process include an in-depth assessment of the participant and the family, including educational needs, child care requirements, and other service needs. The assessment will also examine the skills, prior work experience, employability, and other circumstances of the participant.

On the basis of the assessment, the agency is required to develop--working with the participant--an employability plan, setting out the participant's employment goals and activities and the services necessary to meet those goals. The employability plan reflects the obligations and responsibilities of the client, and the services that must be provided by the state to assure successful participation. States may then require participants to negotiate and enter into a client-agency agreement stipulating the client's obligations and the state's responsibilities in terms of JOBS and supportive services. States may also provide case management services to help the client and the family complete the program and enter employment.

By definition, this process calls for direct personal interaction with each client in order to meet the client's individual needs, skills, and family circumstances. The Family Support Act clearly recognizes that it is this one-on-one personal assessment and brokering of services that can lead to real success. It is a process that contrasts with a programmatic approach in which all clients are channeled into similar types of activities for a specified number of hours regardless of whether the activity is what the client needs to make the transition from AFDC to self-sufficiency.

Definition of Participation

States are concerned that the proposed regulations could undermine the client/family assessment and employability plan process by requiring individuals to participate in JOBS program activities for a minimum period of time each month in order to be counted toward the Act's participation rate requirements. The proposed regulation defining participation is likely to reduce the prospects for client success by pushing recipients into activities simply to meet the participation rate quota, with little regard to whether the activities meet their needs and circumstances. That requirement, in combination with other proposed regulations, could result in state JOBS programs that rely heavily on the least intensive types of activities--such as job search or community work experience--for the majority of participants in order to ensure that the hourly requirement and the participation quotas are met.

Allow me to explain. For each activity outlined in the JOBS program, the proposed regulation defines participation in that activity for the purposes of determining whether a client "counts" toward a state's participation rate. Examples of those definitions follow:

- **Educational activities:** making satisfactory process (both a qualitative and quantitative measure);
- **Job Readiness Activities:** At least 20 hours of instruction or training per week;
- **Individual Job Search**: The equivalent in structured activity and employer contacts of 20 hours per week;
- **Group Job Search**: At least 20 hours per week;
- **On-the-Job Training and Work Supplementation**: Full-time work according to the standard of the occupation;
- **Community Work Experience**: The lower of 20 hours per week or the maximum hours of participation for that individual;
- **Other Work Experience and other allowed activities:** As defined by the state and approved by the Secretary;

The definitions within the proposed regulation do not include as participation (in order to count toward a state's participation rate) time spent in orientation, assessment, or developing the employability plan; time spent prior to or between assignment to an appropriate JOBS activity; or, in the case of training activities, time spent doing related "homework" or self-initiated "practice" outside the classroom.

We believe, as I am certain HHS believes, that participation in JOBS activities should be meaningful and should lead to employment. The proposed definition of participation, however, will cause problems for states and JOBS participants. This definition will lead states to measure meaningful participation solely in terms of compliance with arbitrary numbers--with meeting an unusually high hourly requirement. This will further dilute the meaning and importance of the assessment process and waste scare resources and on activities that may not lead to employment.

Consequences of Hourly Requirements

Based on discussions among the states, we believe that the unanticipated consequences of hourly requirements for individual components of JOBS activities will denigrate the stated legislative intent: the provision of individualized, intensive services to the most severely disadvantaged in our population. Arbitrary hourly requirements destroy the central purpose of individualized employability plans that carefully tailor services to build on client strengths, overcome client deficiencies, and move families toward permanent self-sufficiency. Experience shows that the critical activities of assessment and employability development planning are key to an individual's success in becoming self-sufficient. The hourly requirement, coupled with the participation rate, would drive the program toward unintended consequences, in place of achieving employment goals through the careful assessment and employability plan development process.

As drafted, the proposed regulation could also have the perverse effect of reducing the number of clients a state chooses to serve, and of increasing the costs of serving them. For example, if it is determined in a participant's assessment that 15 hours a week in a JOBS activity will lead to progress toward the employment goal, the state may opt not to proceed with that plan because a 15-hour activity would not "count" toward the state's participation rate. The state will have to find that client another 5 hours per week of activity, and quite possibly additional child care--no matter that it is unneeded and costly. With a limited pool of resources, fewer participants would be served, but more money would be spent.

The imposition of an hourly requirement is contrary to Congressional intent in the JOBS program. Congress specifically included the assessment and development of an employability plan as a way to determine activities appropriate to the individual client and the family. The Conference Report on the Family Support Act states, "participation must be something more than simple registration for the JOBS program; it must meet state-established requirements that are consistent with regulations of the Secretary" (emphasis added; page 148).

It would appear that Congress envisioned a significant role for the states in determining what constitutes participation. The proposed regulations would nullify that responsibility with an arbitrary and ineffectual federal standard. Moreover, it violates the delicately crafted bipartisan compromise on the work requirement.

The proposed durational definition of participation, or any other requirement that limits the ability of states to design program activities to meet the individual needs of clients will weaken the effectiveness and efficiency of the JOBS program. Channeling clients through activities for activities' sake simply to meet a participation quota and avoid the loss of federal JOBS funds is contrary to the intent of Congress and the goals of the Family Support Act. In addition, limiting qualifying participation solely to specific JOBS components ignores the absolute necessity of preplacement activity such as assessment, and the development of an employability plan--both of which are critical to the successful transition to self-sufficiency.

Based on state discussions on May 9 and 10, we recommend that a client's participation in any activity determined as appropriate through the assessment process, and outlined in the individual's employability plan, should constitute "participation" for purposes of determining a state's participation rate. This includes the assessment itself and development of the employability plan.

Rather than being held to an arbitrary federal participation standard, states recommend that they be allowed to rely upon the participation standards currently used by training providers who will continue to provide JOBS component activities on contract. In designing and operating JOBS programs, states would determine which providers can best serve the needs of participants and the design and duration of their programs. In this way, participants could be matched with appropriate activities without needing to meet a strict hourly participation requirement. This would, as the legislation intended, make maximum use of existing services and providers and avoid duplication and the establishment of separate service systems for AFDC recipients.

Most states plan to employ existing service providers to bring experience and expertise to job training, skills development, and other JOBS activities for AFDC recipients. These providers already have established practices, curricula, and standards. The imposition of different, and in most cases conflicting, hourly standards may lead these providers to refuse to serve the JOBS participants, as it is not realistic to expect them to change their programs to meet the new requirements. The alternative is possible as well--that providers may "load up" on hours in order to receive contracts, thus expending scarce JOBS program resources in additional activities simply to comply with the standards.

I also want to point out that, although the participation rates set by the statute appear to be modest at first glance, the computation formula that requires participation to be calculated on a monthly basis will result in rates that are actually much higher than those stated in the Act. Analysis of the participation quotas conducted earlier this year by the Congressional Budget Office and subsequent analysis by several states of the impact of the rates on their state JOBS programs show that the states' JOBS participation rates will have to be three times higher over the course of any year than those indicated in the Act. The proposed regulation will make it much more difficult, if not impossible, for most states to reach the participation quotas set by the Act and states will therefore be penalized by receiving less federal JOBS program funding.

Statewide JOBS Program

The proposed regulations would establish guidelines for determining whether a JOBS program is operated on a statewide basis by October 1, 1992, as is required in the Act. The proposed guidelines would require states to have a minimal JOBS program in place in political subdivisions sufficient to serve at least 95 percent of the state's potential JOBS participants. States would also be required to have a complete JOBS program in all Metropolitan Statistical Areas and in political subdivisions sufficient to serve 75 percent of the state's participants. We are concerned that this guideline will result in inefficient utilization of resources and provision of inappropriate services for participants, especially in rural areas. The fear is that both component services appropriate to the needs of recipients and supportive services, especially child care and transportation, will not be available and that scare federal and state JOBS resources will be spread too thinly across the state to meet the needs of harder-to-serve clients.

In addition, the definition of "political subdivision" is too narrow. States should have greater control over the ability to define the boundaries of a JOBS program area, such as a JTPA Service Delivery Area (SDA) or on some other basis that more accurately reflects an appropriate labor market in a particular area of a state.

Data Collection and Reporting

States also are concerned about the uniform data collection and reporting requirements as stated in the proposed regulations. While the Family Support Act requires reporting of certain items in a uniform manner and permits the Secretary to require additional information to assist in the development of performance standards, the regulations drastically expand the data elements to be reported. This is done on the theory that the Act implies rigorous requirements based on the need to assure that the participation rates and targeting requirements are met.

The states believe that the proposed data collection and reporting requirements are unduly burdensome, particularly during the initial implementation of the JOBS program. During our discussion of this issue, many states indicated that it would be impossible to comply with the proposed requirements without a major upgrade of existing data systems. In addition, states believe that the expense entailed in collecting the required data would be so great that they would be forced to draw scarce federal and state JOBS resources away from program activities that directly assist clients.

Limiting the Use of AFDC Special Needs Payments

The states oppose the proposed regulation prohibiting the current practice of allowing states to fund child care and other work- and training-related supportive services as special needs to participants in the JOBS program. States believe that limiting the use of these funds would inhibit the ability of participants to participate successfully in JOBS.

Maintenance of Effort

While states are generally satisfied with the proposed regulations regarding the "maintenance of effort" and nonsupplanting of non-federal funds for existing services and activities that promote the purposes of JOBS, states believe that this requirement should be based on total expenditures. In other words, states should be required to maintain spending at the FY 86 level for all JOBS-related activities and services without having to maintain spending for each component, activity, service, or supportive service. This will allow states to continue past efforts without burdensome tracking of each individual activity and will allow the flexibility to adjust spending across the various components and activities. We are concerned, however, about the implications of the proposed regulation that would restrict federal reimbursement of JOBS-related activities to activities and services not otherwise available on a nonreimbursable basis.

CHILD CARE

The states have expressed concern about a number of issues in the proposed regulations regarding child care that would limit the availability of reimbursement for this vital supportive service and would create undue burdens on states and clients alike.

The first of these concerns involves the proposed regulation defining how states would determine local market rates for child care. The proposed regulation would limit the local market rate to the 75th percentile cost of child care. States believe that this limit could severely restrict the availability of child care for potential participants in the JOBS program. Many states currently provide child care at levels above the proposed 75th percentile as a means of encouraging provision of care to children from AFDC families. The arbitrary ceiling would further exacerbate the problem of providing child care for participants. States also believe that the proposed regulation requiring states to set market rates for each "political subdivision" is unfeasible, particularly for rural states. Many rural counties lack sufficient child care providers to allow a satisfactory determination of a market rate. States would prefer a more flexible definition that allows them to define local subdivisions in order to better reflect geographic, demographic, and economic conditions.

The second concern is that the proposed regulations would prohibit any federal matching funds for the recruitment or training of child care providers, resource development, or licensing activities. The states believe that the final regulations should eliminate this prohibition. The enactment of a separate authorization for grants to improve state licensing and to monitor child care provided to AFDC children does not suggest Congress intended a prohibition on the use of other funds for activities such as recruitment and training. The states believe that expansion of child care is essential if AFDC recipients are to successfully become self-sufficient and recommend that these activities be reimbursed at the IV-A administrative matching rate of 50 percent.

The next concern has to do with transitional child care. The states oppose the proposed regulation requiring recipients moving off AFDC into employment to apply for transitional child care benefits. The states believe that it is unnecessary to require more paperwork for their clients or themselves. They do support giving states the option of requiring such an application, however, when there is a gap of at least one month between leaving AFDC and the utilization of transitional child care benefits. They also support the notion that the client should then be eligible for only those months remaining of the 12-month period.

In addition, the states believe that the federal government should not establish limits for a sliding fee scale for transitional child care, but that the states should be allowed to set limits based on their experience and the particular needs of the state.

The states recommend that the state and the client each be responsible for paying its share of the cost of child care directly to the child care provider. The states believe that the client should contribute her share directly to the provider in order to encourage self-sufficiency. The states should also not be under federal obligation to monitor the client's payment to the child care provider.

Finally, states oppose the proposed regulation limiting the provision of child care to children under age 13.

States recommend that the age of the child eligible for child care benefits be left to the state's discretion.

CONCLUSION

In conclusion, let me say that the states are very concerned that the tone of the proposed regulations for the JOBS program and related supportive services give the impression that states will not establish and operate meaningful JOBS programs for recipients--that states will try to circumvent the intent of the Act to somehow "game" the system. I want to assure this Committee in the firmest way possible that this is not the case. I remind you that states took the lead in establishing meaningful and successful education, training, and employment programs for welfare recipients. These successful state efforts were the guiding influence in the development of the JOBS program. Governors and state human service administrators played a critical role in support of the JOBS program and the Family Support Act throughout the legislative process and are now responsible for implementing the provisions of the Act. States have a tremendous investment in this program. States are accountable for their actions in this area, not only to the federal government, but to their own legislatures and to their citizens, including above all the clients whom we are committed to serve--the clients who want the opportunity to gain the education, skills, and ability to end their dependence on welfare by obtaining meaningful employment.

States have been actively involved in the regulatory process since the enactment of the Family Support Act. They have been engaged in comprehensive planning for implementation of the JOBS program as well as other provisions of the Act. Most states plan to implement the JOBS program well before the mandatory implementation date of October 1, 1990, including many that have indicated that they plan to begin their JOBS program on July 1, 1989.

We will continue to work with HHS throughout the regulatory process and into the design and implementation of state JOBS programs. We are deeply concerned that the proposed regulations seriously limit the ability of states to operate programs that effectively address the needs of clients and the specific economic and labor conditions of the states. Congress intended the new JOBS program to build upon states' successful experience in operating meaningful education, training, and employment programs for AFDC recipients. We hope the final JOBS program and supportive service regulations provide the flexibility to meet the stated goal of the Act--"to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence."

Mr. PEASE. Finally, for the Manpower Demonstration Research Corp., Dr. Judith Gueron.

STATEMENT OF JUDITH GUERON, PRESIDENT, MANPOWER DEMONSTRATION RESEARCH CORP.

Ms. GUERON. Thank you. I appreciate the opportunity to appear before you today. I will abbreviate my comments and ask that the full testimony be included.

Several factors should be considered in assessing the JOBS regulations. The first is the nature of the legislation itself. As is typical with complex pieces of legislation, JOBS stresses two things, both opportunities and obligations: Opportunities in its emphasis on education and on serving long-term participants, and obligations in establishing the concept of monthly participation standards and extending the mandate to a larger share of the caseload.

The JOBS title does not reconcile these differences, and this leaves a choice. They can be reconciled at the State level in the design and implementation of programs, or they can be reconciled in the regulations. The gist of my testimony is that the regulations move too far in this second direction.

A critical factor to consider in thinking about the JOBS regulations is the funding structure. JOBS sets a floor for State investment at the very low 1987 WIN funding level and requires a substantial State match for expanded programs. This has enormous implications. It means the Federal JOBS legislation creates the opportunity for a new program, but that it will be up to the States to make this actually happen.

The arithmetic of JOBS means there will be no major change in AFDC unless the States put up their own funds to draw down the newly available Federal funds. This means that it will be essential to provide States with an adequate incentive to do this.

A third factor to consider is one of the lessons from recent research. We have learned that even low-cost programs can have long-term positive results but that they are less successful with the most disadvantaged recipients. This is particularly important given the targeting provisions in JOBS and suggests the need to provide State flexibility to test larger investments for this group.

The research also suggests that one reason for the success of programs during the 1980's was that they were State initiatives. JOBS was not passed on the record of the WIN Program but on the State initiatives. We know States will begin the implementation of JOBS from very different starting places. While all States will face a theoretical requirement to serve all adult recipients with children three and over, the reality is they will have to make choices between running larger programs or providing more intensive services to smaller numbers of recipients. Past experience suggests that States are likely to vary in their choices and in where they want to invest.

As a result, States will not face a level playing field meeting any uniform standard of participation, and this will be particularly difficult in some of the poorest States which will face a greater challenge and a greater financial risk if they fail. All of this suggests

HHS staff faced an imposing challenge in drafting the regulations and are to be congratulated in their considerable effort.

In reacting to the regulations, it is critical to step back and look at how all the pieces fit together, and it is from this perspective I would raise one central concern. Is the overall message so demanding, considering regulations on State-wideness, reporting and particularly the intensity of participation, including the 20-hour requirement, that it risks undoing State ownership and even program effectiveness? I am concerned that the answer may be yes.

The particular provision that I think most tips the balance in this direction is the one that requires States to assure that specified shares of the caseload average 20 hours of participation a week to get enhanced Federal matching. Let me briefly explain why.

I reach this conclusion by answering three questions. First, is it feasible for States to meet this regulation? Evidence from the 1980's suggests the challenge. For a number of reasons, we should recognize that JOBS will provide less funding per mandatory eligible person than States spent in many of the low- to moderate-cost programs for which we have evidence of effectiveness, less money. But despite the higher funding for those other programs, our best evidence suggests these earlier initiatives would not have satisfied the combined JOBS participation requirements.

My written testimony summarizes many examples of it. They range from programs in San Diego and Arkansas, to the current GAIN Program, and even to a saturation program that was especially funded to look at the maximum feasible participation.

The second question I would ask is, Is it useful to ask States to increase the hours of participation? The reality of JOBS implementation is that States will have limited funds and have to make choices, and one approach many States may choose is to provide relatively low-cost services, typical of the ones found cost effective in the 1980's, to a large number of people in order to meet broad participation requirements and then concentrate the remaining resources on providing intensive services, such as the ones Mrs. Johnson mentioned, for longer term recipients.

The draft regulations would make it very difficult to do this since their overall effect would be to increase the hours and costs, including the cost of child care, for providing low-cost services. We have no evidence that there will be any payoff to doing this, and it also leaves fewer funds or no funds for providing more expensive services for less job-ready people.

A final question relates to reporting. How difficult will it be to report on average weekly participation? I am a great believer in management information systems, but the complexity of the system needed depends on the complexity of the program design. The management of some State programs might require the level of detail specified in JOBS regulations. However, this detail goes far beyond what most States and counties will find useful to manage their programs, and I would say that I know of no State that could meet these reporting requirements now.

In conclusion, while the statute emphasizes flexibility, the proposed regulations tend to narrow these choices in many ways, not supported by research and experience, particularly around this issue that I am discussing. I am concerned that States will judge the requirements proposed as unattainable within the context of their priorities or resource, and if this assessment is accurate, the regulations risk jeopardizing the very State ownership of welfare reform that was so important to advancing the system over the past decade.

I believe that there is much of value in the regulations, but as prominent change I would recommend reconsidering the concept of defining participation in terms of hours of activity. One could replace it by a number of different changes, one allowing States and counties to establish their own standards on hours by component, as has been the case in every successful State program to date, and to report on the fact of actual monthly participation. I think that would be an advance and is important. This would allow States to vary the intensity of programs to reflect the variation in the distribution of funds. Another less desirable option would be to lower and make more reasonable a uniform national standard.

Abandoning or substantially relaxing this feature of the regulations should give State officials more confidence they can shape jobs to their own conditions and goals and to meet the flexibility of the law and the preamble to the regulations and at the same time meet its requirements. The risk this task will not be taken seriously is small.

Thank you. I would be happy to answer any questions.

[The statement of Judith M. Gueron follows:]

STATEMENT OF JUDITH M. GUERON, PRESIDENT, MANPOWER DEMONSTRATION RESEARCH CORPORATION

Good morning. I am Judith Gueron, President of the Manpower Demonstration Research Corporation. I appreciate the opportunity to appear today before this Committee to share my observations on the regulations proposed by the Department of Health and Human Services to implement the Job Opportunities and Basic Skills Training (JOBS) provisions of the Family Support Act of 1988 (FSA). It is particularly beneficial that these hearings are being held so soon after the issuance of the regulations, at a time when HHS is welcoming feedback and suggestions.

In my remarks, I will begin by proposing several factors that should be considered in assessing the regulations. I will then discuss the implications of these factors for specific features of the regulations and conclude with some recommendations. Given the time available, I will limit my remarks to what I see as the several most important issues raised by the regulations.

A Framework for Assessing the Regulations

My reaction to the regulations is shaped by three factors: the complex nature of the JOBS legislation, the lessons from MDRC's extensive research on employment and training programs for welfare recipients, and the state context in which these programs will be implemented. I will discuss each of these in turn.

The JOBS Legislation

The JOBS title is only one part of the FSA, which, as this Committee well knows, is a wide-ranging bill, which expresses what has often been called a new consensus about responsibility: the responsibility of parents to support their children and the responsibility of government to help people on welfare become employable and obtain work. To do this, the bill includes many changes that would make work more attractive (including transitional child care and Medicaid), that strengthen the enforcement of child support collections, that extend AFDC to two-parent families nationwide, and, finally, that create the JOBS program and related services.

As is typical with complex pieces of legislation, the JOBS title has many messages, some of them contradictory. It is both a departure from and an echo of the recent past. It contains without resolution many different views of the goals and means of moving people off welfare. It both builds on state initiatives and contains elements of federal prescription. Most particularly, it simultaneously pushes states in two directions. First, it emphasizes human capital development and the importance of investing to increase the employability of potential long-term welfare recipients. This suggests more expensive services. Second, it establishes the concept of monthly participation standards and extends a participation mandate to a much-enlarged share of the AFDC caseload (including, for the first time, mothers with children under six years old). This suggests serving more people.

The JOBS title includes but does not reconcile these different directions. This leaves a choice: they can be reconciled at the state level, in the actual design and implementation of welfare employment programs, or they can be reconciled in the regulations. The gist of my testimony is that the regulations move too far toward the second approach.

Another factor is critical in considering the JOBS title. Unlike, for example, the Job Training Partnership Act, which is 100 percent federally funded, JOBS establishes a three-tiered funding approach, which sets a floor for state investment at the WIN funding level of 1987 and encourages additional spending in a way that covers a higher share of poorer states' costs. Requiring a substantial state match for expanded programs is logical, because the AFDC program is a federal-state partnership. But it has enormous implications. It means that the federal JOBS legislation creates the opportunity for a new program but that it will be up to the states to make this actually happen at more than the most minimal level. There will be no major change in AFDC unless states put up their own funds to draw down the newly available federal funds. State action is the key to forward motion. Larger welfare employment programs will exist only if states want and are willing to pay for them.

This funding structure creates a critical context for the regulations. It means that it will be essential to provide states with an adequate incentive to translate the legislation's potential into a reality. Doing this is particularly challenging because JOBS is only one piece of the FSA. In varying degrees, funding for JOBS will compete with funding for other aspects of FSA, as well as broader state programs. This will be particularly hard for some of the poorer states, especially those that face the simultaneous challenge of starting a new AFDC-UP program, implementing the supportive service entitlements, and implementing JOBS.

Lessons of the 1980s

Fortunately, in developing regulations, Congress and the federal government can benefit from the extensive research that has been conducted in the 1980s on earlier state welfare employment programs. I will briefly summarize the key relevant findings.

First, we have learned that welfare employment programs can benefit both welfare recipients and taxpayers. They can lead to long-term increases in earnings and reductions in welfare expenditures. This evidence of impact and cost effectiveness is the critical rationale for expanded programs.

Second, we have learned that even low-to-moderate cost programs, which do not provide very intensive or expensive services, have long-term positive results. These are programs that usually involve, for example, far less than the 20 hours of activity per week proposed in the draft JOBS regulations. Importantly, we do not yet know the extent to which more expensive programs will lead to more successful outcomes.

Third, we have learned that low-to-moderate cost programs have different impacts on different people. There are usually no impacts on the most job ready; there are consistent gains for a middle group; and there is little change in earnings (although there may be some reduction in welfare grants) for the most disadvantaged. This points to the central role of the targeting provisions in JOBS and the importance of learning about the return to larger investments in education and other services for more dependent groups.

Fourth, we have learned a great deal about welfare caseload dynamics, that is, the process by which people leave the rolls on their own. This has implications for the implementation of JOBS. Welfare administrators must be careful to make caseload dynamics work for, rather than against, them in meeting participation targets. This pushes them to look for ways to avoid spending scarce resources up front on people who would leave the rolls very quickly without service.

Fifth, we have learned that more than half of the savings that result from these programs goes back to the federal treasury. As a result, the federal government has a big stake in encouraging states to expand these programs.

Sixth, and most critical for this discussion, we have learned that much of the creativity and will is at the state and local levels. One key reason the welfare employment programs of the 1980s were probably more successful than the traditional Work Incentive (WIN) programs is because they were state initiatives, fostered by federal flexibility. The fact that these were the Governors' programs largely explains why states invested substantial funds and why state staff responded more enthusiastically. It also explains why the programs looked so varied, reflecting vastly different resources and attitudes about what goals should be given priority in program design.

The State Context

As you know better than I, states will begin the implementation of JOBS from very different starting places. Some have run large programs and have considerable funds. Others are starting practically from zero and have very limited resources. This diversity is a fundamental issue that will affect how JOBS looks nationally. Further, most states have extremely limited systems capability. There is no state that we have studied, for example, that can now report accurately on actual weekly hours of program participation.

The experience of the recent past is our best predictor of the likely JOBS implementation story: states will put up very different amounts of funds for very different programs. While all states will face a theoretical requirement to serve all adult recipients with children three or over, none will have adequate resources to provide everyone with comprehensive services. States will have to make choices between "coverage" and "intensity," that is, between running programs that broadly cover a large number of people or programs that provide more enriched services to fewer people, or some combination of the two. Past experience suggests that states are likely to vary in their choices, reflecting different visions and resources.

I draw a very clear conclusion from the experience of the states in the 1980s, one that I would urge HHS to consider as it revises the draft regulations. The movement to restructure AFDC to include a participation obligation and to offer employment and education services will fail if states view this as exclusively a federal program. We should be worried if we stop talking about GAIN, REACH, Project Independence, ET Choices, MOST, and the dozens of other acronyms, and start talking about JOBS. Were these to stop being "the Governors' programs," states would no longer have such a clear interest in investing their funds to make them happen.

We have seen that states and the federal government have a joint commitment to running programs with a payoff, that states have shown new capacity to do this, and yet that states will choose to run programs of very different design and cost. In my judgment, it is vital that federal regulations continue to allow this.

Implications for the JOBS Regulations

All of this suggests that HHS faced an imposing challenge in formulating the draft JOBS regulations. The Department had to balance accountability and state autonomy, as well as the different messages in the law about the obligations of welfare recipients and the desirability of investments to reduce long-term welfare dependency. HHS staff are to be congratulated for the considerable effort required to produce the draft regulations, and for incorporating important lessons from the extensive body of available research.

In reacting to the regulations, it is critical to step back and look at how all of the pieces fit together. It is from this perspective that I would raise one central concern. Is the overall message for JOBS so demanding--considering together the provisions on statewide coverage, component designs, reporting, and, especially, intensity of participation--that it will undo state ownership and state investments, and even program effectiveness? I am concerned that the answer may be "yes." The particular provision that most directly tips the balance, in my judgment, is the one that requires states, as a condition of receiving a more favorable federal funding match, to assure that specified shares of the caseload average 20 hours of actual participation per week over a month, and to report on this accomplishment. While there are many areas one might respond to in the regulations, the rest of my remarks will focus on this issue.

Taken as a whole, the regulations seek to head off the unavoidable tradeoff, mentioned earlier, by requiring that states, in fact, run programs that are both intensive (in terms of hours) and serve large numbers of people. The regulations reflect a concern that, without federal prescription, states may make minimal efforts at either coverage or intensity. But the funding structure of JOBS, the experience with state initiatives, and the research lessons suggest several important questions:

- Does past experience provide any evidence that states can achieve the goals that the regulations set?
- What would states have to do to meet the requirements on the intensity (that is, hours) of participation, and does the evidence suggest that these changes will have positive effects on program impacts and cost effectiveness?
- How much difficulty will states face in meeting the reporting requirements, and do these requirements move beyond information needed for program management?

In addressing these difficult questions, it is important to understand three issues underlying the design and operation of welfare employment programs. The first concerns the phenomenon of caseload turnover. The dynamics of AFDC imply that a larger number of individuals have to be worked with in order to achieve actual participation by a much smaller number. As recipients leave the rolls (for example, in the middle of a month), potential countable participants (on whom the state has already spent resources) are lost--a desirable outcome for the program, but one that magnifies the task of achieving specific monthly participation objectives.

The second issue is related. The experience of past initiatives suggests that welfare recipients do not always attend scheduled activities. This means that a state, concerned about the financial risk of not meeting a target of 20 average weekly hours of actual participation, will have to schedule more than 20 hours and incur the additional cost of operating the program and providing child care during that longer period.

Third, and equally critical to the question of feasibility, is an obvious budget relationship. If it takes X dollars to deliver services and manage a program, it will take X plus Y dollars to prove that this has happened. Although it may be self-evident that reporting is not costless to states, the JOBS regulations suggest a level of detail for uniform reporting that will often go beyond what states will need to manage their JOBS caseloads. Further, while some funding for systems development is available at enhanced federal matching rates, additional state expenditures will be needed to produce the "proof."

These factors, combined with the research lessons and state context outlined earlier, affect the answers to the questions noted above.

Is it feasible for states to meet the regulations?

What does recent state experience suggest about the feasibility of simultaneously meeting the requirements on statewide coverage, component designs, reporting, and intensity of participation? In answering this, I will draw on lessons from detailed evaluations of recent welfare employment programs in eight states, including several different studies in California.

Two findings are salient:

- Because of the statewideness provisions and the expanded mandatory caseload, JOBS will have less funding per mandatory participant than states spent in many of the programs for which we have evidence of effectiveness.
- These other programs, despite higher average funding, would probably not have satisfied the combined JOBS participation requirements.

With the exception of states or counties that operated the very lowest cost models, the earlier initiatives involved a significantly greater investment of total resources than states will be able to make with the first tier of JOBS funds, that is, the amount for which the federal government provides 90 cents out of every dollar. We can only be certain that most states will spend this much on JOBS services, since expenditures beyond this involve clear state resources. Moreover, many of these earlier programs also spent more per eligible person than most states will have available under their full JOBS entitlement--that is, even in the unlikely event that they draw down all of the available federal funds up to the cap, with the federal government providing at least 60 percent of the total funds. This fiscal reality flows from JOBS' requirement of statewideness and its expansion of mandatory participation to parents with younger children.

Even with more money than JOBS, our best evidence suggests that these earlier initiatives did not satisfy the JOBS requirement of averaging 20 hours per week of actual, or even scheduled, attendance. For example, the low-to-moderate cost programs that MDRC found to be cost effective usually scheduled 10 to 15 hours per week of activities--and not for every week during a month.

The demanding nature of the participation requirements in the JOBS regulations is suggested by evidence from California: from a recent demonstration in San Diego, called the Saturation Work Initiative Model (SWIM), which was an explicit test of the maximum feasible participation, and from the statewide Greater Avenues for Independence (GAIN) program, which is one of the nation's most ambitious welfare employment efforts to date. The SWIM demonstration had special funding at an average level in excess of what states will have under the JOBS capped entitlement, and GAIN has even greater resources.

SWIM, which operated from 1985 to 1987, was designed to test the maximum extent to which AFDC recipients with school-age children could be involved in work-related activities in any month, and to determine the effect of this maximum effort on welfare costs and other outcomes. The SWIM model required participation in a sequence of activities. The largest proportion of eligibles participated in a two-week job search workshop. The workshop consisted of three hours of classroom activity per day during the first week, followed by two to three hours of supervised telephone room activity per day during the second week. (Interviews with employers were usually held outside these hours.) About three-quarters of those participating in the job search workshops completed the full ten-day schedule. The second most prominent program component was CWEP, with scheduled work activities generally ranging between 20 and 30 hours per week, and attendance of approximately 50 to 75 percent of scheduled hours. The schedule for other SWIM components varied, from one or two days per month (for a follow-up job search activity) to eight half-days per month (for English as a Second Language--ESL--classes).

While SWIM had the highest overall participation rate--that is, the highest percentage of AFDC mothers who participated in program activities at all--of any program MDRC studied, our best evidence suggests that substantially fewer than 20 percent of mandatory AFDC recipients participated in SWIM-funded or other program-approved education and training activities for an average of 20 hours or more per week. This was true even though SWIM had substantial funds and operated in a community with extensive experience running such programs and with a wide range of educational and employment services available.

California's GAIN program provides other evidence on the participation issue. The GAIN model stresses basic skills education and requires participation by AFDC mothers with school-age children and adults in AFDC-UP cases. In a sequence of activities, education comes first for all those who fail either a literacy or math test but choose not to participate in job search. MDRC's findings from this early period of operations show that basic education, job search, and self-initiated education and training were the three most utilized components.

In GAIN, the hours of educational instruction varied by provider. Most programs offered instruction 12 to 20 hours per week, meeting 3 to 4 hours daily and 4 to 5 days per week. Programs rarely required a commitment beyond 20 hours a week and some provided instruction for only 3 to 4 hours per week. Job search, the second most utilized component, was usually scheduled for 4 hours per day for three weeks. Hours in self-initiated education and training programs varied substantially across programs and counties. While data on actual weekly hours of participation are not available, this suggests that GAIN participation--scheduled or actual--could not have averaged 20 hours per week.

Should states be required to increase the hours of participation?

The reality of JOBS implementation is that states will have limited funds and have to balance coverage (statewideness and participation rates) and intensity (hours of participation and nature of services). Research findings do not provide clear guidance on the optimal allocation of resources, and states have differed in their priorities and willingness to provide resources to implement their objectives. However, one approach that some states might favor would be to provide relatively low-cost services--typical of those found cost effective during the mid-1980s--to a large number of people to meet broad participation targets and to concentrate the remaining scarce resources on providing more expensive and possibly more intensive educational and other services to a smaller number of the potential long-term recipients, who appear to benefit less from low-cost services.

The draft regulations would make it very difficult to implement this strategy, since their overall effect will be to increase the hours and cost of providing low-cost services. For example, a state could not satisfy the JOBS requirements on participation and hours by running a large-scale, mass program similar to the one operated in San Diego or Arkansas during the early 1980s--both of which had notable measured impacts.

But increasing the weekly hours of activity in a mass program has implications for the design and budget of this aspect of the state's activity, and of course for what resources might remain to operate more expensive services for a smaller group. The only components for which this expansion could be done at low cost are job search, CWEP, or some types of educational activities. And, low cost is not no cost. Increasing the duration of these activities will involve inevitable costs for child care, supervision, and oversight. The need to meet a minimum weekly attendance requirement may also reduce the extent to which JOBS programs can depend on services already available in the community--a reliance that the statute and regulations wisely encourage and that will be critical in containing costs. Thus, JTPA, community college, or educational services that JOBS clients may have accessed at no cost to the welfare agency may require JOBS funds, if they have to be specially redesigned to meet JOBS-specified levels of intensity. Similarly, if state JOBS programs need data on hours of actual attendance from service providers, the reporting costs may also have to be borne by JOBS.

Because of the expanded cost of a mass program, few or no funds may be left for providing more expensive services for less job ready people. This is troubling on several fronts. First, we have no evidence that there will be any payoff--in terms of welfare savings--to expanding the duration and the cost of low-cost services. Second, we also lack evidence on how to reach the most disadvantaged and dependent AFDC recipients, and should be providing states with flexibility to try innovative--and sometimes more expensive--strategies for this population. Third, the pressure to meet the requirements for 20 hours of attendance and for "making good or satisfactory progress" in educational activities may push states to serve more employable people within the JOBS target groups. This would run counter to the legislation's emphasis on reducing long-term dependency, with unknown implications for program effectiveness.

How difficult is it to report average weekly participation?

My final observation relates to the reporting requirements spelled out in the regulations. MDRC has had extensive experience working with information systems for welfare employment programs in many states. We have seen no state that has the capacity to provide, with any accuracy, the participation data HHS proposes to collect, especially at the level of hours of actual (as opposed to scheduled) participation. Considerable design and development work at the federal and state level--with the related expense--would be needed for states to begin producing reliable, consistent measures of participation in JOBS. Even the states that have operated more elaborate programs--for example, California and New Jersey--do not now have the systems capacity to report attendance rates for JOBS participants. Being able to do so would require systems development, an expansion of staff, and the involvement and agreement of agencies outside the welfare system, which would have to report attendance to the welfare agency on some consistent and regular basis. Even in the most experienced states, this will take some time; for others, it will take even longer, and compete with other important uses of resources.

I am a believer in information systems as an aid to program management. But the complexity of system needs depends on the complexity of program design. The management of some state programs might require the level of detail implied in the JOBS regulations. However, this detail goes way beyond what most states and counties will find useful and critical for program management. This is because they will not be able to afford to operate large-scale, complex programs, and thus will not need overly complex data systems to manage them. HHS is on the right track in pointing states toward the importance of tracking whether someone actually participates, rather than being simply assigned to an activity, since most states cannot even report on this. But a system of reporting actual attendance on a person-by-person basis, with a 45 day turnaround, is a goal so ambitious that it risks becoming a system of many numbers but little accuracy.

Recommendations

I have attempted to sketch a landscape for JOBS that reflects the diversity of the nation's AFDC program. While the statute seems to offer many different paths for states moving toward the goal of reduced welfare dependency, the regulations proposed by HHS tend to narrow these choices. As they should be, HHS staff have been attentive to state accountability for federal funds. With guidance from the law, they have pushed toward both broader coverage of the welfare caseload and greater intensity of services than are now the norm.

However, viewing the totality of the regulations, I am concerned that states will judge the requirements proposed as unattainable within the context of their own priorities and resources. If this assessment is accurate, the JOBS regulations risk jeopardizing the state ownership of welfare reform that has been so important in pushing the system over the past decade beyond the WIN program of the 1970s.

I believe that there is much of value in the regulations and that they often clarify the implementation task constructively. But, as a prominent change, I would recommend reconsidering the concept of defining participation in terms of hours of activity. My preference would be to see this dropped entirely. More than any other challenge offered by the regulations, running components that must meet this standard and keeping track of hours of attendance for every person on welfare represent potentially major obstacles to effective use of JOBS funds and potential disincentives to state effort. If they are retained at all, I would recommend that the hours be substantially reduced and that compliance not be tracked via such detailed reporting.

Abandoning or substantially relaxing this feature of the regulations should give state officials more confidence that they can shape the JOBS program to their own conditions and goals, and at the same time meet its requirements. The risk that this task will not be taken seriously is small.

Thank you.

Mr. PEASE. Thank you very much. We appreciate your testimony. Mr. Shaw.

Mr. SHAW. I believe you testified that some 26 States would have to change their programs to meet the new regulations.

Mr. SCHEPPACH. It is about that number. That number of States have set up their own programs. They have done this in the early 1980's and 1970's, and they have different State requirements. When you impose these rules and regulations, they are going to have to go back and modify their programs which are currently running effectively.

Mr. SHAW. What type of changes would they have to make?

Mr. SCHEPPACH. A lot is going to deal with the hourly requirements. They may have a 15-hour minimum on something that the Federal regulations require 20 hours. I think one of the things that you have to remember is that welfare reform program will be purchasing services from a current infrastructure of education and training, and a lot of those training and education requirements are set up for other programs.

And so you will cause changes in, for example, the Job Training Partnership Act, which may create inefficiencies in that particular program.

Mr. SHAW. Is it typical for States to have the minimum hours in their regulations?

Mr. SCHEPPACH. A lot of them do.

Mr. SHAW. Could you give us a cross-section of what those hours are?

Mr. SCHEPPACH. We could provide that for the record.

[The information follows:]

The overall policy direction in JTPA has been to promote competency-based education and training services. Specifying periods of participation is antithetical to a competency-based approach which emphasizes outcomes (i.e., skills learned) not inputs (i.e., numbers of hours participated). Actual classroom training times are determined by the individual needs of participants. JTPA has relied on performance-based contracting to ensure that service providers conduct programs that achieve desired outcomes at a reasonable cost. In negotiating these contracts, JTPA officials rely on service-providers to propose the length of training required to achieve specified outcomes for particular types of clients.

In regard to on-the-job training, however, it is standard practice with JTPA to use the training time specified in the DOT (Dictionary of Occupational Titles) as the basis for negotiating OJT contracts.

Mr. SHAW. Would you? I think that might be helpful. We may find a number of States are in agreement with the Federal regulations.

Mr. PERALES. I can speak to the fact I know a number of States do not have any minimum time. In other words, they will, for example, enroll a welfare recipient in a federally funded job training program, a Job Training Partnership Program. That program may have, as I indicated before, 3½ hours a day of actual instruction. That program, that person would not be counted under these regulations because the total amount would not reach 20 hours a week, it might be 17.5 hours. We would have to go to that contractor, as I indicated, and say you are going to have to provide more instruction for this person or else find something completely different for that person to do for the additional number of hours in order to count it.

I can tell you that is clearly true in New York, and I know it is also true in a number of other States.

Ms. GUERON. An example might be the job club component. In two programs carefully researched and studied, one in Arkansas and one in San Diego, they established hours, but they were very different. For example, Arkansas had a total of 30 hours over a month, it was about 10 hours a week for 3 weeks; and San Diego, they had 30 hours in the first week, and then 10 a week for the next 2 weeks. It was their conclusion that this was the most effective way to run a program. Those were scheduled hours and they ranged from 30 to 50 a month. The actual hours were probably two-thirds of that.

So there might be numbers established in certain components. I don't know of any State that runs a training program with fixed requirements. They might range across programs and States. For example, in the GAIN Program in California, training hours do vary substantially across different counties and providers.

Mr. SHAW. Would each one of the panelists say whether they think there should be a minimum hour requirement in the regulations and, if so, what it should be?

Mr. SCHEPPACH. I prefer to let the States determine it themselves rather than having a federally mandated minimum.

Mr. PERALES. As would I, but I don't disagree that there may be a necessity to set a minimum. Certainly one of the minimums that ought to be allowed is that if there are existing training programs that take less than 20 hours, that they have been accepted as useful and fruitful, that we ought to allow those to continue.

Mr. SHAW. Are you saying we should have a certification process without the minimum hours?

Mr. PERALES. I am looking to try to respond to the comment of Mr. Rolston that there ought to be a minimum. I am suggesting there is a clear problem in the fact that there are a number of programs where the hours of instructions are less than 20 hours, and that we ought to have some ability to continue to use those programs which have turned out to be very, very effective.

Mr. SHAW. Is there a certification process now other than the minimum hour requirements within the regulations?

Having spent much of my career in local government, I would guess that a certification process established without guidance on minimum standards with the Federal Government would be a problem.

Did you want to comment?

Ms. GUERON. The logic of setting a minimum standard flows from the view that States have to be leaned on to take the participation requirements seriously. In my view, that battle has been won.

What we have been looking at over the past years is States which are out in the lead in trying to expand the involvement of welfare recipients in meaningful welfare employment programs. So the concept of setting the standard is not necessary.

I would think you are better off not doing it, but if you do, it should be much lower. I would also say that establishing a minimum doesn't mean that States will make it their maximum. Many programs have elements with much greater hours of participation than anything proposed in the regulations.

Mr. SHAW. How many States have an active program?

Ms. GUERON. Have any welfare employment program?

Mr. SHAW. Active.

Ms. GUERON. All States have some kind of welfare employment program under the WIN Program right now.

Mr. SHAW. I see my time is up, Mr. Chairman.

Mr. PEASE. Mr. Sundquist.

Mr. SUNDQUIST. No questions, Mr. Chairman.

Mr. PEASE. Mrs. Johnson.

Mrs. JOHNSON. Thank you, Mr. Chairman.

I am truly stunned at what I am hearing. I really, absolutely am floored with what I am hearing.

The welfare reform bill was supposed to target the people who were least job ready and our goal, at least my goal, was not just job training. I am looking for career training. I want that young woman to get the range of support that will not only enable her to work, but enable her to succeed.

When I look at the work force problems, not one of us goes home on the weekend but employers don't tell us their employees writing skills are not up to par, their math skills are not up to par. Many in our work force don't have the level of skill and education that they need to have a career, that is for promotion to be considered to higher salaries.

I just can't believe that you would sit there and say 15 hours of job training is enough. These are young women, many of whom haven't graduated from high school, and they have to manage budgets; they have to manage to support a family on a minimum income and that is tough sledding.

YMCA's have throughout America developed very good programs about how to shop smart, how to stretch your dollars, how to budget. There are all kinds of life skills you could be providing to these young women. Maybe their training program ends at 15 hours, but how about helping them learn about the stages of child development so you give them support in parenting.

After the 15 hours is up, why don't you have them meet at whatever headquarters you have for family support groups?

What a narrow view. If there is any reason why we ought to have a minimum standard, your testimony here today is it.

Ms. GUERON. Could I——

Mrs. JOHNSON. You certainly may.

Ms. GUERON. Let me answer that briefly. I would say from our organization, we are about to launch a demonstration with States providing intensive services exactly as you describe, and New York State is one of them.

Mrs. JOHNSON. Let me interrupt just a moment. What I am saying is, all this regulation asks is on average, 20 hours. If you are going to provide intensive support services, how are you possibly going to have problems meeting an on-average, 20-hour-a-week requirement?

Ms. GUERON. Mrs. Johnson, the funding provided in the JOBS bill is about $400 per mandatory AFDC recipient. The program that you are describing will cost several thousand dollars. I think that it is very important to do what you are suggesting, and do it for as many younger welfare recipients as you can.

What you are hearing here is that the ability to do that for 20 to 30 percent of the case load is not funded in the legislation.

Mrs. JOHNSON. According to my staff person, CBO is using the figure of $2,500 for education and training per recipient; that is $1,390 from the Federal Government and the maximum from the State.

Assuming the State has a third of the people in the education and training program, that would work out to $2,500. If you want to come to us and say this is what we need and the money is not enough, OK. But don't come to us and say, 15 hours a week is enough. It is not. Twenty hours probably isn't.

Mr. SCHEPPACH. Mrs. Johnson, we don't disagree with your intent. You need to understand that we have been operating these programs effectively as analyzed by MDRC, who has no axe to grind, as efficient programs moving people off welfare. We have been doing it.

Now, what I am saying to you is that the combination of these rules and regulations will do exactly what you do not want, the amount of money available is going to force us to run participants through these programs quickly, spending $400 to $700 per participant. To meet the participation requirements that you are mandating, will cause enormous inefficiency in this program.

You are focusing only on the minimum. That is only a small part of the problem.

There are several things you have to look at jointly. It is a participation rate. It is the minimum and hourly standards, and when you combine all of them, you are going to force what are currently efficient programs to become inefficient.

We have also a very significant financial stake in making these programs work. We pay the Medicaid and AFDC as the Federal Government does. Our potential savings are huge to moving people into self-sufficiency. So our goals are the same. Our means are different.

Ours are based on experience and analyzed independently by other groups. You have to look at the several components of the regulations to get our conclusion.

Mrs. JOHNSON. I am perfectly willing to look at the combined effect of the regulation. By focusing on the 20-hour standard, I don't think you have made the impact of the combined effect clear.

Mr. PERALES. Can I comment, because we in New York take great pride in the fact that we have the comprehensive State center operating with State funds that run on a voluntary basis. We have waiting lists throughout our State. We have 14 in which it is a one-stop shopping center, in which we have a day-care center right in the facility, in which a woman gets not only skills training but education as well as within that training and parenting skills, and we are very proud of these support centers.

My concern is that by putting these participation requirements upon us and giving us the limited amount of financial support, we are getting to serve these additional numbers of people, we are going to have—sorely be tempted to put people, for example, into community work experience programs which I personally don't like. That is you assign someone to work a certain number of hours per week and then that counts as participation.

I don't think many of the women you have described get very much out of being assigned to some work site to act as a clerk or cleaning wastepaper baskets in some Government office so we can mark off that we have enough people participating.

What I am suggesting is that people administering these programs are going to face questions like that. Do we continue to use some programs that we have learned about or, in order to meet the participation requirements, do we put people in other types of programs? That is what concerns me.

Mrs. JOHNSON. Your complaint is not so much with the 20 hours because you said earlier that there are few at the minimum.

I don't think it is the 20 hours you are complaining about. I think what you are complaining about is the participation requirement.

Mr. PERALES. Combined, yes. If you can't count some things we are doing now toward the participation rate, that causes a problem. You are right. I suppose it is a participation problem.

No question, if we could continue to serve people the way we do now and enhance it, and there is a continual flow of Federal money, I would be happy as can be, which is, incidentally, why I commented that to tell me we can't use 4(a) funds for some activity such as paying for lunch money and transportation, that I am also against.

We have a limited amount of Federal support in the JOBS bill being told to serve certain numbers of people every year with a certain number of hours. I don't think we can do it.

Mr. SUNDQUIST. Mr. Chairman, I passed earlier. Could I ask a few questions?

Acting Chairman DOWNEY. Sure.

Mr. SUNDQUIST. I am new to this committee and I am trying to learn something, but I would like to follow up.

Based on what Mrs. Johnson said, you are concerned with the regulation for participants of 20 hours a week, right?

Mr. SCHEPPACH. Yes.

Mr. SUNDQUIST. And that 20 hours of participation will require other resources to be used and as a result welfare families will not get the correct training. Is that what you are saying?

Mr. SCHEPPACH. Again, the minimum requirements I think are only one part of the total. Our problem is that they are going to be purchasing these services from other existing programs and it may be that a Job Training Partnership Program is doing what is necessary at 15 hours. We will have to go back and force it to be a 20-hour program.

Mr. SUNDQUIST. Is it average of 20 hours?

Mr. SCHEPPACH. I think it is minimum 20.

Mr. SUNDQUIST. OK.

Ms. GUERON. To count it has to be 20 hours per person; it is not an averaging process.

Mr. SUNDQUIST. It is a minimum of 20. OK.

Now, you combine that with the provision requiring States to meet participation standards——

Mr. SCHEPPACH. Participation rates.

Mr. SUNDQUIST. The statute requires States to meet participation standards for their nonexempt AFDC caseload.

Mr. SCHEPPACH. That is the 7, 11, 15, 20.

Mr. SUNDQUIST. Part of those are exempt, are they not?

Mr. SCHEPPACH. About 40 percent of the total may be exempt under the definitions.

Mr. SUNDQUIST. Aren't those requirements increasing annually?

Mr. SCHEPPACH. They go from 7 up to 20 percent by 1995.

Ms. GUERON. Yes.

Mr. SUNDQUIST. Now, are you concerned about the 7 percent or are you concerned about the 20 percent?

Ms. GUERON. Can I make one comment on the 7 to 20 percent?

Mr. SUNDQUIST. Yes.

Ms. GUERON. There is a view that 20 percent seems to be very low. I can understand that, but it is important to recognize that to get 20 percent of the people participating on a monthly basis, States and localities will have to be working with the full AFDC caseload, and I say that based on a test that was conducted in San Diego, where they received special funding to get the maximum number of people participating each month; and looking at those data carefully, it was very clear that they did reach that maximum.

The data from that project show that they had about 22 percent of the people per month active in program-arranged activities; another 10 percent in self-initiated training; and another 20 percent in part-time work. The others were in transition between schedule components or they were ill that month or something like that. That meant they worked with the full AFDC caseload. It wasn't as if they were only working with 20 percent to end up with either 22 or 33 percent of the people working.

It is from that perspective that I said that you will be spending your money over a very broad number of people and risk not having the resources left to do just what you are suggesting, Mrs. Johnson, for those most in need.

Mr. SUNDQUIST. Ms. Gueron, in your testimony, didn't you testify that in San Diego participation was between 21 and 35 percent?

Ms. GUERON. I said they got 22 percent in just program-arranged activities and 33 percent when you considered self-initiated education and training as well. It depends a little on how you measure that, and it got up to 55 percent if you included part-time employment, which is not counted as participation under the JOBS Program.

Mr. SUNDQUIST. Thank you.

Mr. SCHEPPACH. When you are talking about a concentrated program in a particular city, it is easy to get a high participation rate. You are talking about averages for the whole State, which is very difficult.

Mr. SUNDQUIST. It seems to me we ought to have some goals that would cause us to stretch and serve the maximum number of people.

What I hear you saying is we have already reached the 20-percent goal but if the Federal Government forced you to go further it would be unfair and you would also need more money.

Mr. PERALES. We are not saying that.

Mr. SUNDQUIST. Have you not learned something along the way about becoming more efficient and spending the money more effectively.

Mr. PERALES. What we are saying is we recognize these rates were part of the legislation. What we are saying is that to now eliminate it and not allow the States, in essence, to determine whether or not somebody is participating in something effectively, to put hours on the participation, makes it that much more difficult and we are saying that based on our experience there are programs in which people can be enrolled that don't meet these hourly requirements. and you are correct, based on our experience, based on our desire to be efficient, we think we would be better off making those determinations. We have been running these programs.

Mr. SUNDQUIST. Do the other States agree with you? Are there some States that would be happy to do this?

Mr. PERALES. I don't know of any State that would be.

Mr. SCHEPPACH. I have had 25 to 38 States in our meetings and there was a strong consensus on that.

Mr. SUNDQUIST. Thank you, Mr. Chairman.

Acting Chairman DOWNEY. Mr. Pease.

Mr. PEASE. Thank you very much, Mr. Chairman.

Obviously, there is a disagreement about what constitutes participation or what ought to constitute participation and who ought to determine that. The regulations say 20 hours per week minimum.

Can any of you suggest a compromise other than allowing the States to do it? I doubt if HHS is going to go that far and let the States determine what it is.

Is 10 a reasonable number, 15, or some other definition of what constitutes reasonable participation?

Mr. SCHEPPACH. I would like to make one comment. I think I would prefer to get back to you and look at more detail in terms of what is currently happening at the State level.

Ms. GUERON. I guess I would respond that—while I am in favor of trying to find out whether more intensive programs can be more effective than some programs operated in the 1980's—I would not like to rule out, especially in some of the poorer States, the opportunity to run statewide a program like Arkansas ran. A program like that actually had people participating probably 20 hours a month.

It doesn't mean that some people weren't participating more, it is that they couldn't afford to run a more intensive program. They might be able to afford it for a small share of the caseload, but they couldn't afford to run it for a larger share of the caseload. That is the reality in many States that will not be able to draw down the full Federal entitlement, but will have to operate the JOBS Program on the WIN funding, which is very limited.

Mr. PEASE. Well, I think your response gets us back to the point Mrs. Johnson made earlier; that is, what does it accomplish? If the training is 20 hours a month, 5 hours a week, the question would arise in my mind, is the person being trained so that that person will be able to hold not only that job but maybe some other job if they get laid off from the one they are on?

It seems to me there has to be some point where we say, well, we are training this person 1 hour a week and he will stop by and we will tell him what it is like to be in the work force. You wouldn't do that, I am presuming.

Ms. GUERON. But I am not assuming the minimum will be the maximum. I am assuming the States will have a tremendous interest in this and try to do what you are saying.

Mr. PEASE. I know the States will but they will be under fiscal pressures, and I guess I am not eager to have a lot of people involved who are getting training all the time if the training they are getting is not adequate for their needs.

I almost would rather have fewer people served, but people who are really getting good basic training. I think there is an essential tension there.

What I am suggesting is there is probably a middle ground someplace where you all would say, of course it shouldn't go below *x* hours a month or whatever. I am trying to figure out whether you have a notion of what that might be.

Mr. SCHEPPACH. Let me make one comment, Mr. Pease. One of the things that I think was good about this legislation is that both the Federal and State Governments will save money over the long run due to the savings in medicaid and AFDC, food stamps, and other programs.

Oddly enough, the share of potential savings between the two levels of government is not all that different from the savings of the investment in the legislation. So I think you need to understand that States are doing calculations about State money being put into the program relative to the potential savings over the long run.

What I am saying is that they are making sound investments. They are running effective programs. So I think the incentives in this legislation for States to do it right, it is not like some other programs where the match may be 5 percent State, 95 percent Federal when there may be incentive for gaming. There is no incentive for gaming in this legislation.

As I said, what this legislation essentially did was to build on what many of the States have been doing over the last 5 to 8 years.

So when you get back to the question of a minimum, it goes back to the Federal Government dictating to State government. I am not sure that is what is necessary in this particular legislation.

Mr. PEASE. Thank you, Mr. Chairman.

Mrs. JOHNSON. Would the chairman allow me to follow up just briefly?

Acting Chairman DOWNEY. No; not until I ask my questions.

Mrs. JOHNSON. Sorry.

Acting Chairman DOWNEY. I want to ask you about these participation rates which you now find to be so onerous. The States did agree to them, did they not?

Mr. SCHEPPACH. Well, they agreed in terms of the legislation, but I think that the way in which they are defining the terms of the rules and regulations is a lot more restrictive.

You mentioned previously the CBO report. I think if you read the language even in the CBO report, they will indicate that although on first glance the participation rates of 7 to 20 percent seem rather low, that they are in fact quite stringent.

Acting Chairman **Downey**. Do you believe—and I do believe the regulations go beyond what we want in terms of inflexibility—that some of the States may make do without the enhanced match, so they don't have to worry about participation rates, would your State consider that?

Mr. **Perales**. No, we would not.

Let me get back to our support for the participation rates. I think it is fair to say that the States reluctantly agreed. We were so anxious to get this legislation because we are so committed to the underlying premise of the legislation. We want to do what we can to make public assistance recipients self-sufficient. We think we have learned how to do that.

I think we had to accept participation rates. We are willing to live with them. But when one now sees them defined so that many of the activities in which we were engaged are not going to count, that makes it that much more difficult. That is what you are sensing from those of us sitting at the table.

Acting Chairman **Downey**. I share that concern.

I want to ask a general question about whether or not the best way to define participation rates would be some standard against how an individual is faring against their employment plan, which I think is intuitively appealing. But I would be a little less concerned about the States having more of an incentive or less if there wasn't some standard to achieve these participation rates.

The fact is that we have got to measure this against something. Participation rates were not my preference, but since we agreed to them there has to be something against which to measure. We are struggling with what is the best something.

As we and the administration work through this process, we want you to help us decide what that standard is. They have decided 20 hours depending on where it is. I would like to have your ideas about what you would prefer.

Would a flexible standard against an employability plan work? Could it be implemented? How would it work if you wanted to do something like that?

Mr. **Perales**. I don't know whether or not something as intuitive as that would be acceptable to HHS or even to yourselves.

My own sense is some of the questions that have been asked imply part of the solution, that if we are talking about some of the people being involved in programs that take less than 20, maybe they ought to count some proportionate share, which was a question asked by Mr. Andrews. It seems to me your own questions imply some answers.

Again, I just want to repeat for the record that we are talking here about minimums that most of the people participate in the programs do so for more than 20 hours and we are concerned we will have to change dramatically the way we operate our programs—some of our programs have been very, very effective—and take less than 20 hours a week, and we would like to continue to do that.

It might be a waiting that might be considered. You might want to give States some flexibility and a year later, come by and see what standard those States are using.

It seems to me there are a variety of ways of doing it. I think we are having trouble coming up with a minimum number of hours because, frankly, my primary knowledge is based on my experience in New York. If I were to say I can live with 15 hours and it wouldn't cause damage, that may cause great damage in Lancaster. I am very, very hesitant to choose a set of hours.

Acting Chairman DOWNEY. Let me ask you about the literacy levels.

There has been some concern expressed about the standard that was used. The regulation defines basically literacy levels at an eighth grade level.

I would like to hear from you what you consider to be a reasonable standard.

I understand in my conversations with Ms. Bertini it was based on something they had found from the Department of Education, it was not something they pulled out of the air.

Mr. SCHEPPACH. I don't know.

Mr. PERALES. Well, is anyone expert here?

Ms. GUERON. No.

Mr. SCHEPPACH. We have not focused on it. I would rather submit something for the record.

Acting Chairman DOWNEY. I would appreciate it if you would.

[The information follows:]

As in the proposed HHS regulations for the JOBS program, the administration's proposed amendments to JTPA would also use eighth grade reading and math levels to define individuals with basic skill deficiencies for purposes of targeting. Up until this time, the JTPA system has gathered information on participants who function above and below the 7th grade reading level for purposes of adusting the Secretary's performance standards. Neither the 7th or 8th grade levels are particularly useful in relating skills to the specific demands of differing local labor markets. A much more useful approach is to test for the functional competence of individuals relative to the requirements of individual jobs. It is important that states and localities be provided the flexibility needed to meet the demands of their local labor markets.

Acting Chairman DOWNEY. My perspective has been that preparing welfare recipients for the job market of the future requires more than an eighth grade level, but if this is not a widely shared concern, then I want to know about that because I don't want to continue to pressure HHS to change it if it is not believed to be a problem.

I think it is a problem. I have been wrong so often that I will be glad to hear from you.

Mrs. Johnson.

Mrs. JOHNSON. I want to be sure to put on the record that it is my understanding that the bill requires 7 percent of the nonexempt population in its participation requirements.

According to CBO, about half of the recipients are exempt by virtue of having children below a certain age, and living in rural areas, and other criteria in the bill, only 50 percent are nonexempt.

So we are talking about 7 of 50 percent, which is in 1990 and 1991 is 135,000 nationwide.

I really fail to see that Congress should step back from 135,000 participants nationwide at 20 hours a week if we are really serious about helping women regain their independence.

In 1992 and 1993, the requirement would be 215,000; 1994, 295,000. Only by 1995 are we talking about 400,000 nationwide.

Truly, I don't see that we could in good conscience lower these standards.

If you can demonstrate you need the money, let's have it.

Thank you.

Mr. SCHEPPACH. Can I make a comment?

Acting Chairman DOWNEY. Yes.

Mr. SCHEPPACH. Mrs. Johnson, one of the things I think you need to remember is the average participant is only in the program about 3 months, so you have to multiply that by four to get the number of people we are involved with over a year.

Mrs. JOHNSON. I would hope you will have more people in high school degree programs and participating more seriously and longer, but even if you don't, these numbers are not overwhelming, and as Dr. Gueron pointed out, you are already involved with the whole caseload.

I had a big hand in implementing Connecticut's work fare law. Everybody said we couldn't do it.

We phased it in over 3 years, a third, a third, and a third. Only the third year did they truly need help in dealing with the problems of that group.

So I think we all need to rise to the challenge we are facing and if there isn't enough money, document it, and let's look at it. But 7 percent of the nonexempt is really only 3.5 percent of all of the cases according to CBO.

Acting Chairman DOWNEY. Before you go, I think Mrs. Johnson has raised an important point, and one shared widely in the Congress, about the numbers because on their face they don't seem extreme.

The point you were making is what?

Mr. SCHEPPACH. Basically, the average participant is only 3 or 4 months in the program and thus we are talking about four times what you are talking about in terms of numbers.

Also, I think that Connecticut has been rather unique over the last 7 or 8 years when you have an unemployment rate of 4 percent or less, you manage to get people into the employment rolls much quickly than you can in Louisiana where you have 12 percent unemployment; Arkansas, with 9 percent, and so on.

So you need to look at the general economy you are dealing with.

I think programs would be quite effective in a State with a fairly low rate of unemployment.

Mr. SUNDQUIST. Even though you are talking about four times the participation rate over the course of a year, you are not talking four times at any one time. You begin with the number Mrs. Johnson outlined and then you exaggerate the requirement when you say it is four times that.

I regard the actual participation requirements as shockingly low.

For you to complain about those numbers seems fedish to me. I would be a little ashamed of myself to come here and complain about the participation standards when we are not talking about that many people.

Acting Chairman DOWNEY. Let me ask this question because it is something we have wrestled with.

The fact is that it is going to be an expensive proposition to do this right. The whole point of the JOBS bill was not to have people run through a JOBS participation program just so we can say they did. That is a waste of your time, my time, and that is not what the bill intends.

The bill is about taking people and making them productive citizens, so the question isn't about the number. The question is how do we best achieve that goal, and if the number helps to facilitate that, fine, the number makes sense and is useful. If it doesn't, it doesn't.

That is the only issue.

We seem to get lost on the question of zero hours or 7 percent or 5 percent and maybe it should be higher, maybe it should be lower. The whole purpose is to make it work.

I am tired of the discussions and I hope you all are, of whether workfare works or this works. Maybe you can satisfy the people in a town meeting by claiming success because we are going to have 30 percent—or everybody—working through the program, but the problem is not so easily solved.

I want to ask you a question about New York and if you would give me the perspective as the percentages apply to our State, What is your impression in terms of what we would have to do to satisfy the participation requirements?

Mr. PERALES. I don't think we would have any problems meeting the 7 percent figure. We are probably doing that already.

I think when we started approaching the 20 percent figure, we would have serious difficulties.

I think again I am almost embarrassed to make these arguments because it sounds as if we don't want to do it. I want to repeat the States are very, very supportive and enthusiastic about welfare reform.

But the fact remains that when—to get certain numbers of people in these programs, you have to be working with a number of others.

There are always people in transition who have just come on the rolls, who may be in the process of being assessed.

So you are not really talking about that entire group of people.

If you consider the fact that people do not stay in these programs very long, for us to maintain a 20 percent involvement is going to be somewhat difficult.

So that again I am not trying to avoid the issue; we are supportive of this.

Frankly, I would love to take Mrs. Johnson's challenge up, which is we can show you we need more money. I think—I appreciate your offer to try to get us more because my own sense is that as we begin to meet those participation rates and do it right, it is going to cost us a lot more money.

Acting Chairman DOWNEY. I was afraid of that

Thank you.

The committee will now hear from its next panel, Kate O'Beirne, visiting fellow, the Heritage Foundation; Robert McGarrah, director, public policy, American Federation of State, County & Municipal Employees; Patricia Keeton, Howard County Community College, Howard County, MD; Mark Greenberg, senior staff attorney, Center for Law and Social Policy; Nancy Ebb, staff attorney, Children's Defense Fund; and Ann Miller, chairman, Public Policy Committee, Association of Junior Leagues, Inc.

Mr. SHAW. Before we start this panel, would it be in order for the members of the committee to submit written questions to the last panel?

Acting Chairman DOWNEY. Absolutely.

We will, of course, have the questions transmitted and make sure they are answered, absolutely.

[No questions were submitted.]

Acting Chairman DOWNEY. Ms. O'Beirne, we will start with you.

STATEMENT OF KATE O'BEIRNE, VISITING FELLOW, DOMESTIC POLICY, THE HERITAGE FOUNDATION

Ms. O'BEIRNE. Thank you, Mr. Chairman. I am over here on the right.

I am very pleased to appear before the committee today and I thank you for your invitation.

There are many familiar individuals here this morning as most of us were involved in the issue of welfare reform as legislation was debated in Congress over the past 3 years.

The Family Support Act of 1988 was a compromise which attempted to address the concerns of all involved parties.

It now appears that many of the old battles fought over the legislation are going to be refought over the law's regulations by those who might now feel that they compromised too much a year ago. The old, contentious issues have surfaced yet again.

Frankly, neither liberals nor conservatives were satisfied with all aspects of the Family Support Act and so it was to be expected that reaction to the regulations would be mixed.

This probably means that the regulations are just about where they should be in terms of balancing the need for State flexibility in designing and implementing a JOBS Program with the Federal Government's responsibility to effectively spend Federal resources—in this case over $3 billion will be expended over the next 5 years on the Family Support Act. What have the American "bought" for that large sum of money?

A national poll conducted in 1986 found that 92 percent of those surveyed believed that welfare recipients should perform some work in exchange for their welfare benefits.

Conservatives supported congressional efforts to tackle the problems of welfare dependency in the hope that meaningful work requirements would be imposed which could move significant numbers of recipients to self-sufficiency.

The final legislation, however, mandates minimal activities for a small percentage of the welfare population—with a participation rate of only 20 percent, not effective for another 5 years.

In fact, CBO estimates that the Family Support Act will have only a "minor effect on the numbers of AFDC recipients by the end of the fifth year."

As a result of the new law, CBO expects 50,000 families, or about 1 percent of the caseload, to leave AFDC.

It has been my experience that this very modest reduction in the welfare caseload is news to the American people who listened to the rhetoric about mandatory work and who really believed that serious work requirements had been imposed.

During numerous radio interviews I have done on the new law, listeners have expressed shock that, according to CBO, when benefit expansions are included, the bill will actually lead to a net increase of families on welfare.

And now critics seek to weaken the proposed regulations so that fewer families will be provided the intensive services or work experience which could lead to independence.

Specifically, these critics argue that imposing a 20-hour-a-week participation requirement on a small fraction of the welfare population is draconian and unworkable.

They argue that in some cases, 20 hours of activity a week is more than some recipients need, and that it is impossible to track where given recipients are in order to verify this level of activity.

The intent of the act is to focus upon those who are in danger of becoming long-term dependents, those without high school diplomas and with no job experience.

If States do focus on this population, as they were intended to, certainly 4 hours a day of intensive services is not unreasonable.

This commitment of time is less than we demand of our high school students, and this at-risk population deserves this concentrated effort to improve their job readiness. Certainly we should expect anyone who is job ready to devote 4 hours a day to looking for work.

Second, the act envisions that education, training and work will become an integral part of the AFDC Program. Over the next 5 years, the program is to undergo a fundamental shift away from an income support program to an education, training and work program.

If this goal is to be realized, States will have to monitor their caseloads to ensure that recipients are upholding their end of the bargain.

In the absence of such controls, the "mutual obligation" and "quid pro quo" rhetoric is meaningless.

A minimal Federal standard assures that participation will be significant and reflects the compromise reached when the Family Support Act was approved. Opponents would not now be permitted to violate this compromise.

In the interest of time, my formal testimony addresses child care provisions and I would submit it for the record and be happy to talk about it in response to questions.

Thank you, Mr. Chairman.

Acting Chairman Downey. Absolutely.

All of your statements will be inserted in the record in their entirety.

[The statement of Kate O'Beirne follows:]

TESTIMONY OF KATE O'BEIRNE
VISITING FELLOW, DOMESTIC POLICY
THE HERITAGE FOUNDATION

I am pleased to appear before the subcommittee today and I thank you for your invitation. There are many familiar individuals here this morning as most of us were involved in the issue of welfare reform as legislation was debated in Congress over the past three years. The Family Support Act of 1988 was a compromise which attempted to address the concerns of all involved parties. It now appears that many of the old battles fought over the legislation are going to be re-fought over the law's regulations by those who might now feel that they compromised too much a year ago. The old, contentious issues have surfaced yet again.

Frankly, neither liberals nor conservatives were satisfied with all aspects of the Family Support Act and so it was to be expected that reaction to the regulations would be mixed. This probably means that the regulations are just about where they should be in terms of balancing the need for state flexibility in designing and implementing a JOBS program with the federal government's responsibility to effectively spend federal resources--in this case over $3 billion will be expended over the next 5 years on the Family Support Act. And what have the American people "bought" for that large sum of money?

A national poll conducted in 1986 found that 92% of those surveyed believed that welfare recipients should perform some work in exchange for their welfare benefits. Conservatives supported congressional efforts to tackle the problems of welfare dependency in the hope that meaningful work requirements would be imposed which could move significant numbers of recipients to self-sufficiency.

The final legislation, however, mandates minimal activities for a small percentage of the welfare population--with a participation rate of only 20%, not effective for another five years.

In fact, CBO estimates that the Family Support Act will have only a "minor effect on the numbers of AFDC recipients by the end of the fifth year" ("Work and Welfare: The Family Support Act of 1988," January 1989). As a result of the new law, CBO expects 50,000 families, or about 1% of the caseload, to leave AFDC. It has been my experience that this very modest reduction in the welfare caseload is news to the American people who listened to the rhetoric about mandatory work and who really believed that serious work requirements had been imposed. During numerous radio interviews I have done, listeners have expressed shock that, according to CBO, when benefit expansions are included the bill will actually lead to a net increase of families on welfare.

And now critics seek to weaken the proposed regulations so that fewer families will be provided the intensive services or work experience which could lead to independence.

Specifically, these critics argue that imposing a 20 hour a week participation requirement on a small fraction of the welfare population is draconian and unworkable. They argue that in some cases 20 hours of activity a week is more than some recipients need, and that it is impossible to track where given recipients are in order to verify this level of activity.

***The views represented herein are the witness' own as The Heritage Foundation takes no position on legislation.**

The intent of the act is to focus upon those who are in danger of becoming long-term dependents, those without high school diplomas and with no job experience. If states do focus on this population, certainly 4 hours a day of intensive services is not unreasonable. This commitment of time is less than we demand of our high school students, and this at-risk population deserve this concentrated effort to improve their job readiness. And certainly we should expect anyone who is job ready to devote four hours a day to looking for work.

Secondly, the Act envisions that education, training and work will become an integral part of the AFDC program. Over the next five years, the program is to undergo a fundamental shift away from an income support program to an education, training and work program. If this goal is to be realized, states will have to monitor their caseloads to ensure that recipients are upholding their end of the bargain. In the absence of such controls, the "mutual obligation" and "quid pro quo" rhetoric is meaningless.

A minimal Federal standard assures that participation will be significant and reflects the compromise reached when the Family Support Act was approved. Opponents should not now be permitted to violate this compromise.

The second specific section of the proposed regulations I would like to briefly address concerns the child care component of the JOBS program.

Again, CBO's analysis is useful with respect to the average cost of child care. CBO's national average monthly cost was based on cost data from provider surveys, household surveys, Title XX payments, state budgets and several state work programs. The average cost was $169 a month for pre-schoolers. CBO recognized that the "average market rates may be lower than the levels frequently quoted in personal and media stories." There is certainly a variation across states in the average cost, but if states don't accurately determine their "local market rate", or if states design inappropriate service delivery systems where recipients are discouraged from using all but center-based child care, the costs of day care will quickly escalate. We will witness an enormous federal and state child care bill with no effect on welfare dependency rates.

In fact, the evidence suggests that when AFDC mothers work they prefer informal care arrangements, particularly by relatives, much like other working mothers. In the Arkansas work program, women were required to arrange their own day care, and the majority apparently preferred informal care arrangements. One fourth of non-employed welfare mothers have another adult female present in the household. These familial relationships and informal networks should be encouraged and yet some advocates would have the proposed regulations discourage these highly desirable informal arrangements.

The proposed regulations state that local market rates should be established at the 75th percentile of the cost of such care. This means that the federal government will be reimbursing the cost of day care in behalf of welfare mothers which is more expensive than the care which 75% of working mothers use. This will drive up the cost of day care in the JOBS program for no apparent purpose. This formulation assumes that high cost equals high quality day care. In fact major studies have concluded that staff-child ratios in informal day care, even unregulated, is smaller than in centers (Abt Associates/Stanford Research Institute, and Mathematica). Advocates on the right and left agree that a key component of quality care is a small staff-child ratio.

These critical components of the JOBS program, along with a stronger Child Support Enforcement program, go to the very heart of the intentions of the Family Support Act. The minimal participation requirement outlined in the proposed legislation represents both an opportunity and an obligation for families on welfare. This was the intent of Congress and should not be thwarted by the Act's critics.

HHS has drafted regulations which seek to strike the necessary balance between state flexibility and federal responsibility. Welfare families deserve no less than this commitment to meaningful involvement in the JOBS program and latitude in choosing the child care arrangements which they prefer without state interference.

I would be happy to answer any questions the committee might have.

Acting Chairman Downey. Mr. McGarrah.

STATEMENT OF ROBERT McGARRAH, DIRECTOR OF PUBLIC POLICY, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO

Mr. McGarrah. Thank you, Chairman Downey.

I am Rob McGarrah, director of public policy for the American Federation of State, County & Municipal Employees, which represents 1.2 million workers.

Mr. Chairman, I want to thank you for the opportunity to appear here today and to commend you for your strong commitment to reforming our welfare system.

I am here to raise our serious concerns over these proposed regulations on the Family Support Act.

I will summarize my statement here.

We think particularly the regulations on program participation, as you heard, displacement caused by mandatory work programs and child care among others do not accurately follow the statute and should be changed.

If not corrected, we think these regulations will cause the States to run the kinds of punitive programs that Congress wanted to prevent when it enacted the Family Support Act.

I was a welfare-eligibility technician in Philadelphia in the 1970's and I worked closely with welfare families and I learned firsthand in this effort that welfare parents must overcome very difficult barriers before they can successfully find work and support their families.

Intensive and well-designed education and training programs are a must.

Unfortunately, in many States, what we call welfare reform is work off your grant or else.

There is no attempt to provide an individual with training programs suited to specific needs.

The proposed regulations that HHS has issued will force States to move further in the direction of mandatory and punitive work off grant type programs.

First, there are major problems with the definition of JOBS Program participation as you have heard. They require work supplementation and on-the-job training be full time, even though many recipients would benefit greatly from part-time training programs.

Second, the requirement that an individual must participate at least 20 hours per week is far more stringent than Congress intended.

What if a welfare mother is best suited to 15 hours a week training? Should we force her to do job search or CWEP for 5 hours when she won't benefit from these programs?

These restrictions will result in a waste of limited resources.

That is really the heart of the problem here. It will force States away from the more expensive training programs into job search and work experience, not because these programs are needed, but because they are easier and cheaper to operate.

If a State does run work experience programs like CWEP, then that program must meet the standards set in the statute. These work programs abuse and threaten welfare recipients.

In New York City, for example, they have caused the loss of thousands of entry-level jobs and elimination of entire job titles.

The Family Support Act includes strong and carefully worded language to protect regular paid employment and to prevent displacement by work program participants.

The displacement language in the regulations, however, is substantially weaker than the displacement language contained in the statute.

Proposed regulations do not prohibit displacement of jobs or positions, but only workers. They also require proof of intent to displace.

Such changes gut the displacement provisions is the Family Support Act.

Again, to cite New York City, it is not individual workers, but entry-level positions that are displaced.

The final regulations must be corrected to provide the full displacement protections that Congress intended.

To enforce the displacement provisions, the Family Support Act requires States to establish and maintain a grievance procedure; and a proper grievance procedure that results in a fair and prompt resolution of disputes is critical to the success of the program.

To work properly, the State grievance procedure must include a fair process with specific time limits.

It also must specify the relief required if displacement occurred.

Without these provisions, the grievance procedure and displacement language are meaningless.

Proposed regulations set no State grievance procedure guidelines.

There are no details on the content and nature of the procedure. There isn't a single minimum standard.

The final regulations must include minimum standards for these procedures.

Finally, there are serious problems with the regulations on child care as you have heard.

The Family Support Act guarantees child care for welfare recipients who want to find a job, but the proposed regulations undermine this basic vital guarantee.

States can deny child care to welfare recipients who volunteer for the program and deny child care if they feel the mother can arrange for informal care and to qualify for child care after finding a job, a welfare recipient must apply in writing.

Given our understaffed welfare offices in New York City and virtually every other city throughout this country, we can say with certainty that processing this written application will lead to significant delays and it will force many welfare recipients who have gone out to find a job to quit because of lack of timely child care assistance.

Chairman Downey, members of the subcommittee, many of the administration's proposed regulations will force states to operate JOBS programs that are more punitive and offer far fewer services than Congress intended when it enacted welfare reform.

It is important that regulations on participation be eased, so that the displacement language be strengthened to reflect the statute, grievance procedures be set, and child care guarantees be protected.

These changes are necessary, Mr. Chairman, to ensure that welfare reform results in real jobs as Congress intended so that we can break the cycle of welfare dependency.

Thank you, Mr. Chairman.

Acting Chairman DOWNEY. Thank you.

[The statement of Robert McGarrah follows:]

STATEMENT OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

Good morning Mr. Chairman and members of the subcommittee. I am Rob McGarrah, Director of Public Policy for the American Federation of State, County and Municipal Employees which represents 1.2 million workers.

Mr. Chairman, I want to thank you for the opportunity to appear here today and to commend you for your strong commitment to reforming our welfare system.

As you know, AFSCME opposed passage of the Family Support Act as it came out of Conference. Yet, despite problems with the new law, states are now obligated, under the Act, to design and operate programs which will help welfare recipients out of poverty and into employment.

Congress' intent to require states to operate bona fide programs in return for federal dollars is clear. The Act specifically states that the purpose of the JOBS Program is to assure that needy families with children obtain the education, training and employment that will help them avoid long-term welfare dependence. In order to guarantee that states operate quality JOBS Programs, it is crucial that the federal regulations which govern the operation of these programs adequately reflect congressional intent and statutory language.

Problems with the Proposed Regulations

We commend the Department of Health and Human Resources (HHS) for their timely release of the proposed regulations. Unfortunately, in several key areas, the proposed regulations do not reflect the outcome of the congressional debate.

In particular, the following proposed regulations are problematic and should be changed: (1) the proposed regulations defining program participation; (2) those governing the use of work programs including displacement of regular employment by work program participants, the mandated grievance procedure to settle displacement disputes, and the mandated reassessment after a CWEP participant's assignment has lasted six months; and (3) those on child care. If not corrected, these regulations will cause states to run the kinds of punitive programs Congress wanted to prevent when it enacted the Family Support Act.

Many of the major problems in the proposed regulations directly and indirectly involve the use of the Community Work Experience Program (CWEP) and other work programs. AFSCME fought hard to have limits placed on the use of these programs, because it is our experience that they do little to help welfare recipients find decent employment and, instead, are often used simply to force these individuals to "earn" their benefits. As a result, many state and local agencies use CWEP participants to do work normally performed by paid employees, with no intention of ever promoting these participants into paid, regular employment that will enable them to move into the workforce.

The Family Support Act allows States to use CWEP, but only if the program is designed to help individuals into the paid labor force. Congress recognized the problems with an unfettered CWEP program and agreed to a number of restrictions on its use: (1) work experience programs must include training, (2) they must lead to employment, (3) they cannot result in the displacement of regular paid employment, (4) CWEP participants must be reassessed every six months to determine whether further participation is likely to lead to employment, and (5) an equal pay standard must be used to determine hours after a CWEP assignment has lasted nine months or more. And States do not have to use CWEP, but can use on-the-job training (OJT) or work supplementation programs instead.

Unfortunately, the proposed regulations are written in such a manner that States are encouraged and even forced to rely on CWEP, instead of providing more intensive training services.

Definition of JOBS Program Participation

Major problems arise from the definition of JOBS Program participation. First of all, the proposed regulations require that work supplementation and OJT placements must be full-time in order to count towards participation. Such an unwarranted standard for OJT and work supplementation will certainly force states to rely on CWEP and Job Search as their optional JOBS Program components, especially since women with children under six are required by statute to participate only part-time. But federal regulations, with no basis in statute, should not bias a state's decision in favor of opting for CWEP when many welfare recipients would benefit from a part-time, structured OJT or work supplementation assignment. The full-time participation requirement for these components must be dropped.

There are other serious problems with the way HHS has chosen to define participation, in particular, its decision to require a minimum hourly participation of 20 hours per week. This requirement will force states to develop programs which meet mandated participation quotas rather than programs which are designed to meet the individual education and training needs of the welfare recipient. The proposed regulations on program participation must be revised to allow states greater flexibility to offer recipients the specific types of services they need. Work experience should not become the cornerstone of the state's JOBS Program by default.

Displacement by Work Program Participants

If a state does choose to implement a work experience program, then that program must meet the standards set in statute. One of the key standards is the anti-displacement provision. The Family Support Act includes strong and carefully worded language to protect regular, paid employment and prevent displacement by work program participants.

However, the displacement language in the proposed regulations, which were jointly issued by HHS and the Labor Department, is actually different and weaker than the displacement language contained in the statute.

Attached to our submitted testimony is Exhibit 1 which compares the displacement language in the proposed regulations to the statutory language. As you can see, some significant changes were made that, if implemented, would result in displacement which is clearly prohibited in statute. For instance, the proposed regulations do not prohibit the displacement of jobs or positions, but only workers. They also require proof of intent to displace. Such changes gut the displacement provisions in the Family Support Act. Final regulations must be corrected to ensure that the displacement provisions reflect the full protections in statute. Exhibit 1 outlines specifically what must be changed.

Grievance Procedure for Resolving Displacement Complaints

An important component of the displacement protections contained in the Family Support Act is the requirement that states establish and maintain a grievance procedure for resolving displacement complaints. The statute also provides that the State's decision on the grievance can be appealed to the Secretary of Labor for investigation. HHS and Labor were required, by statute, to issue joint regulations governing operation of this procedure.

However, proposed regulations on the state grievance procedure are nonexistent. No details on the content and nature of the procedure are specified. And not a single minimum standard is set.

Last December, we submitted to HHS for consideration, our recommendations on what standards, at a minimum, the state grievance procedure should meet. These recommendations were based on regulations which currently cover the state grievance procedure in the Job Training and Partnership Act. A copy of these regulations and our recommendations is attached to our testimony (see Exhibit 2).

Quite frankly, we do not understand why HHS and Labor chose not to implement minimum standards for the grievance procedure such as those already in JTPA regulations. The grievance procedure is a vital tool needed to prevent states from abusing work experience programs. To be administered properly, the state procedures must provide for a fair and expeditious decision making process. They must also set the relief that should be provided if displacement has occurred. Without these provisions, the grievance procedure and displacement language are meaningless. The final regulations must be amended to include provisions which set minimum state grievance procedure standards.

The Six Month Reassessment Provision

The Family Support Act requires that the state provide a reassessment and revision of an individual's employability plan after each 6 months of the individual's participation in a work experience program. Congress included this requirement to prevent states from using long-term CWEP assignments at the expense of regular employment and to ensure that CWEP participants are receiving training and jobs skills needed to help them find a job.

It is vitally important that standards on the content of the reassessment be established by HHS in regulations to help achieve this purpose. Unfortunately, HHS decided not to set any standards in this area, allowing states to treat the mandated reassessment as just another paper pushing process.

As an example of the type of 6 month reassessment states will implement if there are no regulatory standards, we need only to consider the proposed Ohio State JOBS Plan which was recently submitted to HHS for approval. If approved, the Ohio Plan would allow county welfare agencies who administer the JOBS Program to meet the 6 month reassessment requirement by simply reviewing the individual's employability plan and filling out a form. A face-to-face interview with the CWEP participant is not required, nor are there any set guidelines to determine whether the CWEP assignment should continue. There is no attempt to gain input from participants to see whether they feel they are benefitting from the program.

To prevent the sort of paper reassessment that Ohio and other states will implement, HHS must revise its proposed regulations to include minimum standards for the reassessment process. In addition to requiring that a face-to-face interview be conducted, the regulations should set the following standards: the reassessment must (1) identify, in writing, the specific skills acquired during the preceding six months and how these relate to the needs of the participant as identified in the initial assessment; and (2) show how the extension of the assignment beyond six months will lead directly to employment or will help the participant acquire additional skills needed for employment. Failure to comply with these standards should result in termination of the individual's participation in CWEP for at least one year and not until the state can prove that a future assignment would meet these standards.

If included in the regulations, the above standards will obligate states to conduct a bona fide reassessment which will work to reduce abuse of CWEP and protect the rights of welfare recipients as Congress had intended.

Child Care

Finally, there are serious problems with the proposed regulations on child care. The statute is quite clear that states must guarantee child care when needed to accept or retain employment, or in order to participate in an approved education or training program. This strong language was included because Congress recognized that access to adequate child care would break down the single, most important barrier to the labor market that welfare mothers must overcome. HHS's proposed regulations undermine this basic and vital guarantee.

Unlike the statute, the proposed regulations would require states to provide child care only to meet their participation rate requirements. Under these regulations, states could deny child care to welfare recipients who want to, but are not required to participate in a JOBS program activity. States could also deny child care if they conclude that informal care arrangements should be available at no cost.

Other problems with the proposed regulations on child care include the requirement that a family must apply for transitional child care benefits in writing. Such a requirement will delay the timely provision of these crucial benefits to mothers who find employment, ultimately jeopardizing their ability to remain on the job.

Taken together, the proposed regulations on child care contain a number of loopholes which eliminate the statutory right to child care established in the Family Support Act. These loopholes must be closed to ensure that all welfare recipients entitled to child care services, as guaranteed in the Family Support Act, do in fact receive those services.

In conclusion, while we recognize that HHS had to complete a monumental task in a very short time, the proposed regulations are inconsistent with the Family Support Act in a number of key areas. Most of these inconsistencies will result in states operating JOBS Programs that are more punitive and offer less services than Congress had intended.

It is important that final regulations be changed to accurately reflect the statute so that welfare recipients receive the education and training services they need to make the successful transition to employment in decent-paying jobs. We look forward to working with you, Mr. Chairman, to make sure that quality welfare reform becomes a reality.

I would be happy to answer any questions which you, or the subcommittee members may have.

EXHIBIT 1

COMPARISON OF DISPLACEMENT LANGUAGE IN STATUTE TO LANGUAGE IN PROPOSED REGULATIONS

FAMILY SUPPORT ACT
SECTION 484

No work assignment under the program shall result in:

(1) the displacement of any currently employed worker or position (including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits), or result in the impairment of existing contracts for services or collective bargaining agreements;

(2) the employment or assignment of a participant or the filling of a position when (A) any other individual is on layoff from the same or any equivalent position, or (B) the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created with a participant subsidized under the program; or

(3) any infringement of the promotional opportunities of any currently employed individual.

The provisions of this section apply to any work-related programs and activities under this part, and under any other work-related programs and activities authorized (in connection with the AFDC program) under section 1115.

PROPOSED REGULATIONS
SECTION 251.3

The State agency shall assure that CWEP, other work experience, on-the-job training [OJT], and Work Supplementation assignments:

(a) Shall not result in the displacement of currently employed workers, including partial displacement, such as a reduction in hours of nonovertime work, wages, or employment benefits;

(b) Shall not impair existing contracts for services or collective bargaining agreements;

(c) Shall not result in the employment or assignment of a participant or the filling of a position when any other person not supported under this program is on layoff from the same or a substantially equivalent job within the same organizational unit, or when an employer has terminated any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under this program.

(d) Shall not infringe in any way upon promotional opportunities of persons currently in jobs not funded under this program; and

(e) Shall not result in the filling of any established unfilled position vacancy by a participant assigned under section 482(e) [work supplementation program] and section 462(f) [CWEP] of the Social Security Act, as amended.

Explanation of Differences Between Statue and Regulation

The regulations differ from the statute in the following ways:

The statute provides that assignments shall not result in the displacement of any currently employed worker or position. The comparable regulation only prohibits displacement of currently employed workers. (See 251.3(a)).

The statute provides that assignments shall not result in the employment or assignment of a participant or filling a position when any other individual is on layoff from the same or equivalent position. The regulation limits this prohibition to cases when any other person not supported under JOBS is on layoff from the same or a substantially equivalent job within the same organizational unit. (See 251.3(c)).

The statute provides that assignments shall not result in employment or assignment of a participant or filling a position when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created with a participant subsidized under the program. The regulation limits this prohibition to cases where an employer has terminated any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under this program. (See 251.3(c)).

The statute prohibits any assignment from resulting in infringement of promotion opportunities of currently employed individuals. The regulation prohibits infringing in any way on promotional opportunities of persons currently in jobs not funded under JOBS. (See 251.3(d))

AFSCME Recommendations

Final regulations need to be corrected to ensure that the regulatory protections reflect the full statutory protections. Specifically, Section 251(a) should apply to both currently employed workers and positions. The displacement protections should apply to all workers, not just those who are not subsidized by JOBS. Section 251(c) should be corrected to provide that assignments shall not result in employment or assignment of a participant or filling a position when any other individual is on layoff from the same or equivalent position with an employer, not just within the same organizational unit.

Section 251(c) should also be corrected to provide that assignments shall not result in employment or assignment of a participant or filling a position when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect (as opposed to intention) of filling the vacancy so created with a participant subsidized under the program. This change is crucial to preventing displacement. Congress clearly intended to include this languages since the Conference Report expressly states: The phrase in the House bill "with the intention of" is replaced by "with the effect of."[1]

Finally, the Conference Report indicates congressional intent that the prohibition against using participants to fill established, unfilled position vacancies was to apply to CWEP, work supplementation, and work experience.[2] Section 251.3(e), limiting applicability to CWEP and work supplementation, tracks the statutory language, but HHS should correct the regulation to be consistent with legislative intent.

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[1] H.R. Rep. No. 100-998, 100th Congress, 2nd Session 136(1988).

[2] Id, at 135.

EXHIBIT 2

GRIEVANCE PROCEDURE FOR DISPLACEMENT COMPLAINTS

Under the Family Support Act, states must establish and maintain (pursuant to regulations of HHS and the Department of Labor) a grievance procedure for hearing and resolving complaints by regular employees or their representatives that an assignment violates the anti-displacement provisions. The decision of the State can be appealed to the Secretary of Labor for investigation and such action as the Secretary may find necessary.[1]

Proposed Regulations

The regulation requires states to establish and maintain a grievance procedure, but does not specify any details of the content and nature of the procedure. [2]

The regulation establishes the following procedures for appealing the decision:

The state's decision may be appealed to the Office of Administrative Law Judges, Department of Labor. The review will be on the record of the state proceedings, and will be limited to questions of law. The state's findings of fact shall be conclusive if supported by substantial evidence. [3]

Copies of the appeal must also be sent to the Department of Labor's Assistant Secretary for Employment and Training, and HHS' Assistant Secretary for Family Support. The appeal must include the provisions of the FSA or regulation believed to have been violated, a copy of the original complaint filed with the state, and a copy of the state's findings and decision.[4]

On receipt of the appeal, the Office of Administrative Law Judges will request the administrative record from the state; the state must certify and file it within 30 days, with copies to the Department of Labor's Assistant Secretary for Employment and Training, and HHS' Assistant Secretary for Family Support.[5]

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[1] Section 201(b), creating Section 482(d)(1).

[2] Section 251.4(a).

[3] Section 251.4(b).

[4] Section 251.4(d).

[5] Section 251.4(e).

On receipt of the copy of the appeal and record, the Assistant Secretary of Employment and Training will review the record, and may choose to file an amicus curiae brief or report. The state agency and Assistant Secretary may also file a report.[6]

The decision of the Office of Administrative Law Judges will be the final decision of the Secretary of Labor on the appeal.[7]

AFSCME's Recommendations

The proposed regulation is deficient in the following ways.

First, it fails to set minimum standards for state grievance procedures. It seems wholly inappropriate for regulations to provide that review will be on the record of the state proceedings, without describing minimum due process safeguards for those proceedings.

Second, the statute provides for appeal to the Department of Labor for investigation and such other action as the Secretary of Labor finds necessary. But the regulation says there will be no investigation, and that the decision will be based on the record of the state proceedings. Congress envisioned a more active role for the Department of Labor.

Third, the regulation sets no time frames for making decisions, and does not describe what relief can be provided on a finding that the law has been violated.

Final regulations should, at a minimum, set specific time-frames and remedies. Such regulatory standards are necessary to ensure that the displacement protections in the Family Support Act can be enforced. We recommend the following:

Time Frames

1) After a complaint is filed against the employer of the individual on work assignment, the regulations must require that a hearing be held between the two parties within 30 days of filing. The hearing should be held before the state agency responsible for administering the JOBS program.

2) The regulations must require that a written decision on the grievance be made by the state agency within 60 days from the date of filing.

3) If a complainant does not receive a written decision within 60 days of filing, or receives a decision which is unsatisfactory to the complainant, then the complainant must have the right to appeal the decision to the Governor. The complainant should be given reasonable time (30 days) to file the appeal after the agency decision is made or after the 60 day limit expires.

4) The Governor must have an independent panel review the appeal and a decision must be made within 30 days.

5) If the panel has not made a decision within 30 days, or if the decision is unsatisfactory to the complainant, then a complaint can be filed with the U.S. Secretary of Labor.

In order to reduce the number of grievances that may be filed, it is important that labor and management communicate and cooperate to the extent possible on the nature and structure of particular work assignments. We strongly suggest that to facilitate cooperation and reduce grievances, the regulations require that where a collective bargaining agreement exists, the employer consult with the union on the design and content of any work assignment activities with respect to training, supervision, job descriptions, wage rates and occupations planned before such work assignments are made. Prior notification to the union about planned work assignments (with sufficient lead time - 30 days) will reduce unnecessary problems.

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[6] Section 251.4(f).

[7] Section 251.4(g).

Remedies

If it is determined that an employer has violated the displacement provision in the Family Support Act through the use of work program participants, then the following remedies shall be instituted:

1) The employer shall fully replace any and all workers or positions displaced by work program participants, and

2) The employer shall immediately and for at least one (1) year following the finding of displacement cease and desist its use of work program participants in any and all capacities, and

3) The agency responsible for administering the work program shall be prohibited from assigning work program participants to any employer found to have violated the displacement provision for at least one (1) year following the finding of displacement.

Attached is a copy of the regulations governing the grievance procedure in JTPA. (Subpart D, Sections 629.51-.54). We would like to work together with HHS and Labor to design regulatory guidelines for a grievance procedure well-suited to the Family Support Act.

entity pursuant to their mutual agreement.

§ 629.44 Sanctions for violations of the Act.

(a) Pursuant to sections 164 (b), (d), (e), (f), (g), and (h) of the Act, the Secretary may impose appropriate sanctions and corrective actions for violations of the Act, regulations, or grant terms and conditions. Additionally, sanctions may include the following:

(1) Offsetting debts, arising from misexpenditure of grant funds, against amounts to which the Governor is or may be entitled under the Act, except as provided in section 164(e)(1) of the Act. The debt shall be fully satisfied when the Secretary reduces amounts allotted to the Governor by the amount of the misexpenditure; and

(2) Determining the amount of Federal cash maintained by the Governor or subrecipient in excess of reasonable grant needs, establishing a debt for the amount of such excessive cash, and charging interest on that debt.

(b) Except for actions under sections 164(f) and 167 of the Act, to impose a sanction or corrective action, the Secretary shall utilize initial and final determination procedures outlined in Subpart D of this part.

(c) To impose a sanction or corrective action regarding a violation of section 167 of the Act, the Secretary shall utilize the procedures of 29 CFR Part 31.

(d)(1) The Secretary shall hold the Governor responsible for all funds under the grant. The Governor shall hold subrecipients, including SDA grant recipients, responsible for JTPA funds received through the grant.

(2) The Secretary shall determine the liability of the Governor for misexpenditures of grant funds in accordance with section 164(e) of the Act, including the requirement that the Governor shall have taken prompt and appropriate corrective actions for misexpenditures by a subrecipient.

(3) Prompt, appropriate, and aggressive debt collection action to recover any funds misspent by subrecipients ordinarily shall be considered a part of the corrective action required by section 164(e)(2)(D) of the Act. In this regard, the Governor may request advance approval from the Secretary for contemplated corrective actions. Such requests may address debt collection actions or options which the Governor plans to initiate or to forego. The Governor's request shall include a description and assessment of all actions taken by the subrecipient to collect the misspent funds.

(4) In making the determination required by section 164(e)(2) of the Act, the Secretary may determine, based on a request from the Governor, that the Governor may forego certain collection actions against a subrecipient where that subrecipient was not at fault with respect to the liability criteria set forth in section 164(e)(2)(A) through section 164(e)(2)(D) of the Act. The Secretary shall consider such requests in assessing whether the Governor's corrective action was appropriate in light of section 164(e)(2)(D) of the Act. At that time, the Secretary shall also consider advance approvals (previously granted pursuant to paragraph (d)(3) of this section) in light of the Governor's demonstrated efforts to undertake the approved course of action.

(5) The Governor shall not be released from liability for misspent funds under the determination required by section 164(e) of the Act until the Secretary determines that further collection action, either by the Governor or subrecipient, would be inappropriate or would prove futile.

(e) The Governor shall have the authority to reduce allocations to a service delivery area if—

(1) The Secretary offs[illegible] debt against funds allotted to [illegible] Governor and

(2) The debt resulted [illegible] a misexpenditure by the [illegible] grant recipient, or its subrecip[illegible]s.

(f) Nothing in this sec[illegible] shall preclude the Secretary from imposing a sanction directly against [illegible] subrecipient as authorized in section 164(e)(3) of the Act. In such a case, the Secretary shall inform the Governor of the Secretary's action.

§ 629.45 Closeout. [Reserved]

§ 629.46 Performance standards.

(a) The Secretary shall prescribe performance standards for adults and youth under Title II-A and dislocated workers under Title III [illegible] accordance with section 106 of the Act. Standards for youth employment competencies shall prescribe the framework for competency development.

(b) The Governor shall establish SDA standards within the parameters set annually by the Secretary pursuant to section 106 of the Act and apply the standards in accordance with section 202(b)(3) of the Act.

(c) Pursuant to initial and annual instructions issued by the Secretary, the Governor shall:

(1) Collect the data necessary to set standards pursuant to section 165 of the Act; and

(2) Submit reports according to sections 106 and 121(b)(3) of the Act.

(d) Pursuant to section 106(h)(1) of the Act, the Governor shall, after exhaustion of remedies below, impose a reorganization plan if a subrecipient fails to meet performance standards for 2 consecutive years.

(1) Prior to imposition of a reorganization plan, the Governor must offer the subrecipient opportunity for a hearing.

(2) Should the hearing determination uphold the Governor's imposition of a reorganization plan, the subrecipient may appeal to the Secretary.

(3) Appeals shall be submitted to the Secretary, U.S. Department of Labor, Washington, DC 20210, ATTENTION: ASET. A copy of the appeal shall simultaneously be provided to the Governor.

(4) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification from the Governor.

(5) The appealing party shall explain why it believes the Governor's decision is contrary to the provisions of section 106 of the Act.

(6) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the Governor's decision is inconsistent with section 106 of the Act. The Secretary may consider any comments submitted by the Governor. The Secretary shall make a final decision within 60 days after this appeal is received section 106(h)).

Subpart D—Grievances, Investigations, and Hearings

§ 629.51 Scope and purpose.

(a) *General.* This subpart establishes the procedures to receive, investigate and resolve grievances, and conduct hearings to adjudicate disputes under the Act. Complaints of discrimination pursuant to section 167(a) of the Act will be handled under 29 CFR Parts 31 and 32.

(b) *Non-JTPA remedies.* Whenever any person, organization or agency believes that a Governor, SDA grant recipient or other subrecipient has engaged in conduct that violates the Act and that such conduct also violates a Federal statute other than JTPA, or a State or local law, that person, organization or agency may, with respect to the non-JTPA cause of action, institute a civil action or pursue other remedies authorized under other Federal, State, or local law against the Governor, SDA grant recipient or other subrecipient without first exhausting the remedies in this subpart. Nothing in the Act or this chapter shall:

(1) Allow any person or organization to join or sue the Secretary with respect to the Secretary's responsibilities under JTPA except after exhausting the remedies in this subpart;

(2) Allow any person or organization to file a suit which alleges a violation of JTPA or these regulations without first exhausting the administrative remedies described in this subpart; or

(3) Be construed to create a private right of action with respect to alleged violations of JTPA or the JTPA regulations.

§ 629.52 State grievance and hearing procedures for non-criminal complaints at the Governor and subrecipient level.

(a) *Policy.* This section deals with the handling of non-criminal complaints. Criminal complaints are to be handled as specified in § 629.55 of this part.

(b) *Procedures at Governor and SDA levels.*

(1) Pursuant to section 144(a) of the Act, each Governor shall maintain a State level grievance procedure and shall insure the establishment of procedures at the SDA grant recipient level for resolving any complaint alleging a violation of the Act, regulations, grant or other agreements under the Act. The procedures must include the handling of complaints and grievances arising in connection with JTPA programs operated by each SDA grant recipient and subrecipient under the Act. These procedures must also provide for resolution of complaints arising from actions, such as audit disallowances or the imposition of sanctions, taken by the Governor with respect to audit findings, investigations, or monitoring reports (section 144(a)).

(2) The grievance hearing procedure shall include written notice of the date, time and place of the hearing, an opportunity to present evidence, and a written decision.

(c) *State review.*

(1) If a complainant does not receive a decision at the SDA grant recipient level within 60 days of filing the complaint or receives a decision unsatisfactory to the complainant, the complainant then has a right to request a review of the complaint by the Governor. The request for review shall be filed within 10 days of receipt of the adverse decision or 10 days from the date on which the complainant should have received a decision. The Governor shall issue a decision within 30 days. The Governor's decision is final.

(2) The Governor shall also provide for an independent State review of a complaint initially filed at the State level on which a decision was not issued within 60 days or on which the complainant has received an adverse decision. A decision shall be made within 30 days. The Governor's decision is final.

(d) *Federal review of local level complaints without decision.*

(1) Should the Governor fail to provide a decision as required in paragraph (c) of this section, the complainant may then request from the Secretary a determination whether reasonable cause exists to believe that the Act or its regulations have been violated.

(2) The Secretary shall act within 90 days of receipt of the request and where there is reasonable cause to believe the Act or regulations have been violated shall direct the Governor to issue a decision adjudicating the dispute pursuant to State and local procedures. The Secretary's action does not constitute final agency action and is not appealable under the Act (sections 166(a) and 144(c)). If the Governor does not comply with the Secretary's order within 60 days, the Secretary may impose a sanction upon the Governor for failing to issue a decision.

(3) The request shall be filed no later than 10 days from the date on which the complainant should have received a decision as required in paragraph (c) of this section. The complaint should contain the following:

(i) The full name, telephone number (if any), and address of the person making the complaint;

(ii) The full name and address of the respondent against whom the complaint is made;

(iii) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;

(iv) The provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated;

(v) A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case; and

(vi) A statement of the date the complaint was filed with the Governor, the date on which the Governor should have issued a decision, and an attestation that no decision was issued.

(4) A request will be considered to have been filed when the Secretary receives from the complainant a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the State and SDA grant recipient.

§ 629.53 Non-criminal grievance procedure at employer level.

(a) Governors, SDA grant recipients and other subrecipients shall assure that other employers, including private-for-profit employers of participants under the Act, also have a grievance procedure relating to the terms and conditions of employment available to their participants (section 144(b)).

(b) Employers under paragraph (a) of this section above may operate their own grievance system or may utilize the grievance system established by the Governor or SDA grant recipient under § 629.52 of this part. Employers shall inform participants of the grievance procedure they are to follow.

(c) An employer system shall provide for, upon request by the complainant, a review of an employer's decision by the SDA grant recipient and the Governor, if necessary, in accordance with § 629.52(b) of this part.

§ 629.54 Federal handling of administrative and civil complaints.

(a)(1) The Comptroller General's and Inspector General's authority to conduct audits, evaluations and investigations is as specified in § 629.42 of this part.

(2) The Secretary is authorized to monitor States (section 183(a)).

(3) The Secretary shall each fiscal year investigate several States to evaluate whether the use of funds received under the Act is in compliance with the provisions of the Act (section 165(b)(1)(A)).

(4) The Secretary may receive complaints alleging violations of the Act or regulations through the Department's incident reporting system.

(b) As a result of the findings or content of any of the activities listed in paragraph (a) of this section, the Secretary may:

(1) Direct the Governor to handle a complaint through local grievance procedures established under § 629.52 of this part; or

(2) Investigate and determine whether the Governor or subrecipients are in compliance with the Act and regulations (section 183 (b) and (c)).

(c)(1) The Secretary shall notify the Governor of the findings of the Secretary's investigation and shall give the Governor a period of time, not to exceed 60 days, depending on the nature of the findings, to comment and to take appropriate corrective actions.

(2) The Governor shall offer an opportunity for a hearing at the State level to those subrecipients adversely affected by the results of an investigation, audit or monitoring activity as specified in § 629.52(b) of th

part. The Governor shall inform the Secretary of actions undertaken. including any disposition of an audit conducted by the State to deal with the Secretary's findings if one was undertaken within the time frame specified by the Secretary.

(3) The Secretary shall review the complete file of the investigation and the Governor's actions. The Secretary's review shall take into account the provisions of § 629.44 of this part. If the Secretary is in agreement with the Governor's handling of the situation. the Secretary shall so notify the Governor. This notification shall constitute final agency action.

(d) *Initial and final determination.*—(1) *Initial determination.* If the Secretary is dissatisfied with the Governor's disposition of an audit as specified in § 629.42 or other resolution of costs. with the Governor's response to findings pursuant to paragraph (c) of this section. or if the Governor failed to comply with the Secretary's decision pursuant to § 629.52(d)(2) of this part. the Secretary shall make an initial determination of the matter in controversy including the allowability of questioned costs or activities. Such determination shall be based upon the requirements of the Act. regulations. grants. contracts or other agreements. under the Act.

(2) *Informal resolution.* The Secretary shall not revoke a Governor's grant in whole or in part. nor institute corrective actions or sanctions. without first providing the Governor with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the Secretary's initial determination. In the case of an initial determination pursuant to an audit. the informal resolution period shall be at least 60 days from issuance of the initial determination and no more than 170 days from the receipt by the Secretary of the final approved audit report. If the matters are resolved informally. the Secretary shall issue a final determination pursuant to paragraph (d)(3) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(3) *Final determination.* (i) If the Governor and the Secretary do not resolve any matter informally. the Secretary shall provide each party with a final written determination by certified mail. return receipt requested. In the case of audits. the final determination shall be issued not later than 180 days after the receipt by the Secretary of the final approved audit report.

(ii) The final determination shall:

(A) Indicate that efforts to informally resolve matters contained in the initial determination have been unsuccessful:

(B) List those matters upon which the parties continue to disagree:

(C) List any modifications to the factual findings and conclusions set forth in the initial determination:

(D) Establish a debt if appropriate:

(E) Determine liability. method of restitution of funds and sanctions: and

(F) In the case of a final determination imposing a sanction or corrective action. offer an opportunity for a hearing in accordance with § 629.57 of this part.

(iii) The final determination constitutes the final agency action unless a hearing is requested.

(e) Nothing in this section shall preclude the Secretary from issuing an initial and final determination directly to a subrecipient in accordance with the authority of section 164(e)(3) of the Act. In such a case. the Secretary shall inform the Governor of the Secretary's action.

§ 629.55 Federal handling of criminal complaints and reports of fraud, abuse and other criminal activity.

All information and complaints involving fraud. abuse or other criminal activity shall be reported directly and immediately to the Secretary of Labor.

§ 629.56 Opportunity for informal review.

(a) Parties to a complaint under § 629.57 of this part may choose to waive their rights to an administrative hearing before the Office of Administrative Law Judges (OALJ) by choosing to transfer the settlement of their dispute to an individual acceptable to all parties for the purpose of conducting an informal review of the stipulated facts and rendering a decision in accordance with applicable law. A written decision will be issued within 60 days after the matter is submitted for informal review.

(b) The waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process shall be treated as a final decision of an Administrative Law Judge pursuant to section 166(b) of the Act.

§ 629.57 Hearings before the Office of Administrative Law Judges.

(a) *Jurisdiction.* The jurisdiction of the OALJ extends only to those complainants identified in sections 164(f) and 166(a) of the Act. All other disputes arising under the Act shall be adjudicated under the appropriate recipient or subrecipient grievance procedures or other applicable law.

(b) *Sanctions.* For the purpose of this section. "sanctions" will not include actions required by authority other than this Act. For example. the imposition of interest charges where required by the Debt Collection Act of 1982 is not a sanction for the purpose of this section.

(c) *Procedures for filing request for hearing.*

(1) Within 21 days of receipt of the determination imposing the sanction or corrective action. or denying financial assistance. the applicant. Governor. SDA grant recipient or other subrecipient of funds may transmit by certified mail. return receipt requested. a request for hearing to the Chief Administrative Law Judge. United States Department of Labor. Room 700. Vanguard Building. 1111 20th Street. NW.. Washington. DC 20036. with one copy to the departmental official who issued the determination and one copy to the Administrator. Office of Financial and Administrative Management. Employment and Training Administration. Washington. DC 20210.

(2) The 21-day filing requirement is jurisdictional: failure to timely request a hearing acts as a waiver of the right to hearing.

(3) The request shall specifically state those issues of the determination upon which review is requested. Those provisions of the determination not specified for review. or the entire determination when no hearing has been requested within the 21 days. shall be considered resolved and not subject to further review. Only alleged violations of the Act. regulations. grant or other agreements under the Act fairly raised in the determination and the request for hearing are subject to review.

(4) The same procedure set forth in paragraphs (c) (1) through (3) of this section applies in the case of a complainant who has not had a dispute adjudicated by the informal review process of § 629.56 of this part within the 60 days. except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period. In addition to including the determination upon which review is requested. the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

(d) *Service and filing.* Copies of all papers required to be served on a party or filed with the OALJ shall be filed simultaneously with the OALJ and served upon the parties of record or their representatives. and shall contain proof of such service.

Acting Chairman DOWNEY. Ms. Keeton.

STATEMENT OF PATRICIA M. KEETON, LEGISLATIVE CHAIRPERSON, AMERICAN ASSOCIATION FOR ADULT AND CONTINUING EDUCATION

Ms. KEETON. Good morning. Thank you, Mr. Chairman. I really appreciate the opportunity to appear before this subcommittee.

I am legislative chairperson for the AAACE, the American Association for Adult and Continuing Education. I am a professional in the field for the last 10 years working from day to day with the clients we are talking about, designing the programs, and hiring the instructors who have to teach them.

I realize this is the most far-reaching overhaul of the welfare system in my lifetime and one I probably won't have an opportunity to comment on too many other times. It is an exciting opportunity presented to us who work in local educational agencies.

However, as I studied these regulations, I felt an immediate concern about the intent of Congress, that it is not being carried out. In fact, in some ways, it might be considered counterproductive to the educational needs of our clients.

I would like to add I have had the opportunity to be a director of a special project in Maryland adopted from California, entitled Comprehensive Adult Student Assessment Systems Program, and as certified trainer for this program and a reading and learning disability specialist, I have trained instructors and program administrators in using basic skills assessment that is criterion referenced directly linked to testing the educational objectives of the clients.

It is these areas, the basic literacy level of job clients and the provision of basic skills program, that I feel the regulations fail to reflect the intent of Congress.

Mr. Downey, you are not wrong. Eighth grade is too low. First, the regulations and the preamble assume there is a relationship between completing the eighth grade and possessing the skills to become employable. In my experience, there is no correlation between these two factors.

The JOBS Program requires that each learner has an employability plan. To this end, we would hope that it implies specifying the competency that somebody needs to fulfill such a position. Education tied to grade level has no relationship to employability.

Second, the assumption that successful completion of eighth grade means the same to everybody. Certainly if you understand assessment credentials, the testing criteria, eighth grade is not the same in all tests. Last count I had there were over 40 tests in the Nation being used that achieved grade levels of eighth grade which have separate criteria.

What should my students be able to do? There is no definition as to what they should be able to perform. Do they have to compute? Do they have to write invoices? Do they have to write statements? None of those things can be attributed to a grade level.

A related concern lies in the required case record data section, which suggests that literacy levels be established through a TABE or other prescribed tool. There is no agreement that the Tests of

Adult Basic Education represent a national standard any more than any other commercially produced test, and frankly I was surprised to see that the regulations would point out to a commercially produced instrument and suggest a recommendation to that.

In my work with other States, I found that States are reluctant to prescribe tools because they don't know what to prescribe, and in many cases, local programs are using things designed for kids. The instruments again have no relationship to what a person needs to be employed.

The next issue was that I am not sure how the U.S. Department of Education could have recommended this definition since it is not used in any Federal program. If you look at the Adult Education Act and the regulations, they do have a definition for adult education. It refers to adults who are performing below the high school level.

Specifically, they don't have the skills to function effective below the college level. They don't have the skills to function effectively in society, or they have not achieved a certificate of graduation.

It goes on to say that there are educationally disadvantaged and there are two definitions to that, performing below a fifth grade level or performing in an area that is based on a competency-based system of measurement, so it gives States like Maryland, California, Oregon, Washington, Connecticut the ability to report not in grade level terms. They intend to report instead on the goals and competencies that a student has achieved.

Finally, the literature has been prolific in the last couple of years from Work Force 2000 to the Department of Labor reports about a work force that must possess higher basic skills. I am sure Congress intended something more than what was needed for a 13-year-old.

If you look at something that was just laying around last week in the hearing from the Congressional Clearinghouse on the Future, requirements for literacy are increasing. In the 1950's, the skill level was a 5th or 6th grade; in the 1970's, a 10th or 12th grade education. Some projections now say that trends by the 1990's, which is next year, will be a 12th grade level and anybody who has less than that would be excluded from employment.

The data that has been collected continues the grim scene for anybody without the skills. In 1987, 9 out of 10 children in families headed by young women who had not graduated from high school lived in poverty and those with an 8th grade level had half the median income of those of high school graduates.

Another real concern is the definitional section that talks about limited English proficiency. The regulatory language itself is not offensive, but there is no mention of an assessment.

What is most disturbing is the preamble section where it says that a basic literacy level does not mean that that State must provide English if such instruction is not necessary to become self-sufficient. I am at a real loss as to how I would communicate to develop an employability plan if they can't speak English.

One final comment in the area of educational levels. It is no longer possible to assume that grade level attainment makes it, whether it is 8 or 12. A high school diploma nowadays does not assure that somebody possesses the skills. I have had a personal incident in the last 2 years that has affected my life. Knowing a family of five adults, all of whom are second-generation welfare, aged between 19 and 24, one family out of several that I have to deal with on a day-to-day basis in my adult education program. Two of the four older sisters have four children. All of the kids are in special remediation, all under 8 years old. Two, three of the adults have completed high school; the other two went beyond ninth grade. None of them have the reading, writing and computation skills to make it. Even if they hold a job a short time, they can't keep it.

Another section of the regulations talk about contracts and arrangements made for nonreimbursable services. It kind of hints that States might not be relying on the adult basic education people to pick up these particular education requirements, or that it might prohibit contracting services with adulted agencies.

The use of the term "traditional" is helpful, because 4 to 6 hours a week is traditional, but that will not cut it for these clients. States are now serving less than 4 percent of the clients eligible. Certainly programs like mine have been stretched to the absolute limit.

Two years ago, Congress had a vision of welfare reform. If this vision is to reach its potential for freeing generations of Americans and their underclass from the frustration of dependence and joblessness, Congress has to take a commitment, make a commitment to quality education. It can't be accomplished just through coordination any longer. There can be no substitute for investment.

Without a substantial investment, our Nation is going to be paying for the next many generations to come. We will also have missed an incredible opportunity to grapple with the literacy problems we are all familiar with now in the last 10 years as they have been made public to us.

There are thousands of adult educators like myself who are very willing and able to help at a local, State, or national level to see your vision of the JOBS Program become reality.

Thank you

[The statement of Ms. Keeton follows:]

STATEMENT OF PATRICIA M. KEETON, LEGISLATIVE CHAIRPERSON, AMERICAN ASSOCIATION FOR ADULT AND CONTINUING EDUCATION

I am Patty Keeton. I appreciate the opportunity this Subcommittee has offered me today to comment on the draft regulations of the Family Support Act of 1988.

As the legislative chairperson for the American Association for Adult and Continuing Education (AAACE) and as a professional in the field who works with many of these clients on a daily basis, I have been excited by the giant steps Congress decided to take in order to raise the educational level of the poorest Americans. I realized that this was the most far-reaching overhaul of the welfare system in my lifetime and that there were tremendous opportunities and challenges being presented to those of us who work in state or local welfare and educational agencies. Our goal would be to work together to provide educational services to many of those who will otherwise continue with long-term welfare dependancy.

However, as I studied these proposed regulations, I felt immediate concern that they do not reflect the clear intent of Congress. In fact, I would suggest that in some ways they do not encourage effective delivery of certain services and may even be considered counter-productive. I am basing this judgement on 10 years in the field of adult education.

During that time I have been fortunate to work in a wide variety of settings, from classroom instructor in English as a Second Language (ESL) and Adult Basic Education (ABE), to consultant to state departments of education. For the last five years, I have been the coordinator of the Office of Basic Skills and Foreign-born Programs at Howard Community College in Columbia, Maryland. My responsibilities include providing ABE, ESL, and GED Preparation courses to over 800 residents of Howard County each year and administering pre-employment education programs for the local Employment and Training Division and the county Department of Social Services. During this time, I have also been a director for a special project to implement the Comprehensive Adult Student Assessment System (CASAS) in all ABE programs in Maryland. As a certified trainer for CASAS and a reading and learning disabilities specialist, I have had the opportunity to train instructors and program administrators in Maryland and other states, to use basic skills assessment that is directly linked to the educational objectives of their students.

It is these areas - assessing the basic literacy level of JOBS participants and providing basic skills programs - that I feel the regulations do not at all reflect the intent of Congress. To define a basic literacy level as "equivalent to successful completion of the eighth grade" is to assume several factors and ignore many others.

First, the regulations and the preamble assume that there is a relationship between completing the eighth grade and possessing the skills needed to become employable and remain employed. In my experience with numerous basic skill programs, I can see no consistent correlation between these two factors.

The JOBS program requires that each adult learner have an employability plan. To me this requirement implies specifying the competencies and abilities each client needs to fulfill such a plan. Education tied to grade levels can only deal with academic functioning and has no apparent relation to employability.

Secondly, there is the assumption that the definition of "successful completion of the eighth grade" means the same thing to all people. It does not, since each test that might be selected has used a different set of criteria to determine their standard for "eighth grade." This definition does not offer any explanation as to what areas an individual would be literate in. Should the students in my programs be able to compute, read, write, solve problems? Is their literacy level the same as a level of reading ability?

A related concern lies in the required case record data (section 250.82) which suggests that "literacy levels be established through the TABE or other state prescribed tool." There is no agreement that the Tests of Adult Basic Education (TABE) represent an acceptable national standard any more than any other commercially produced test and frankly I'm surprised to see a specific commercially produced material appear to be recommended in these federal regulations. In addition, in my work in other states I have not found that states are reluctant to "prescribed tools." In many cases programs are using instruments that were designed for children or regardless of whom they were designed for, many of the instruments that are used have no relationship to the world of employability skills.

The next issue of concern about the 8th grade level designation is that I don't know how the USDE could have recommended this to the DHHS since it is not a standard for literacy in any other federal program. The DOL requires us to target those performing under a 7th grade level in JTPA programs for remedial basic skills since they recognize the demand for higher level skills in the workplace. USDE collects data regarding levels in ABE and ESL programs, none of which have been defined as basic literacy. The Adult Education Act and the regulations do have a definition of Adult Education that refers to services to adults below the college level specifically targeted at those who "do not have the skills to function effectively in society" or those "who have not achieved a certificate of graduation from a school providing secondary education."

The Adult Education Act goes on to define yet another different level of adult, as those individuals who are "educationally disadvantaged." This population has been defined as performing at the 5th grade level or at the lowest levels of an adult education program where other systems of measurement are used. Congress made provisions for those states including Maryland, California, Washington, and Connecticut that do not use grade levels to measure the educational progress of adults, but rather use criterion-referenced assessment tools. These enable the programs to identify the basic skills an individual needs and compare those with the skills needed to attain the goals of the employee's educational development plan.

Finally, the literature has been prolific with studies on the changing demographics in this country by the year 2000 and the increasing demand for a workforce that possesses a high level of integrated basic skills. In mandating basic and remedial educational components, I'm sure Congress envisioned a much higher standard than the skills of 13-year-old children! If this is to be a truly meaningful effort than it must change lives and significantly enhance the opportunities of those who presently have limited basic skills. The recent report from the American Society for Training and Development and U.S. Department of Labor entitled "Workplace Basics" states that "...for the individual worker, basic skills are the keys to greater opportunity and a better quality of life. Workers with good basic skills, find it easier to acquire more sophisticated skills that leverage better jobs and more pay."

The data that has been collected nationally creates a grim scene for those whose skills are not beyond the eighth grade level. In 1987, nearly nine out of ten (89.4 percent) children in families headed by young women who had not graduated from high school lived in poverty. In addition, the median income of families headed by an eighth grade graduate was less than half the median income of families headed by a high school graduate.

It is critical that states be encouraged to provide basic remedial skills at a higher standard than the proposed regulation (250.1) states and that they be provided the flexibility to report in alternate terms to a "grade level" if those systems are readily accessible to them.

In another portion of the definitional section, the regulations define Limited English Proficiency (pg. 15676). The regulatory language is not objectionable as it is written. To their credit, the administration has included the skills of "speaking, writing or understanding the English language" for this population, but interestingly they did not specifically mention these skills in the definition of "basic literacy level." There is no mention of assessment for these skills in the regulations which leads me to caution that as difficult as it may seem to find a national standard to assess basic literacy, I sincerely hope that these regulations do not imply that assessment of levels in the English as Second Language population can be accomplished with a "TABE"-like test. If it is possible to conceive, grade level equivalencies are even more meaningless to this population than to the native-born adult population. The regulations should be much clearer in their expectations for this group. It is again quite clear that Congress intended this populations to receive educational services through the JOBS program. What is most disturbing is the language in the preamble section of the regulations. Specifically the statement (pg. 15642) that says the requirement to achieve a basic literacy level" does not mean that a state IV-A agency must provide English as a Second Language if such instruction would not be necessary for an individual to become self-sufficient (e.g. where an employer does not require English proficiency). This seems to invite the states to find some areas of work where clients will not need to speak English, rather than deal with statutory requirement Congress has enacted to provide English. I am at a loss to explain how we in the field would begin to assist these people in establishing an employability plan and encourage them to become self-sufficient, without dealing with such a major barrier.

One final comment in the area of educational levels. It is no longer possible to assume that grade level attainment - whether at the 8th grade or even the 12th grade, and a high school diploma provide complete assurance of possession of basic skills. We have many students in adult education programs who possess a high school diploma, but come to us for remediation in areas of basic skills. I know one very real example among countless others. This is a family that I have worked with for the last two years. There are four sisters and one brother, ages 19-25 and they are second generation welfare recipients. Two of the four sisters have four children each and all of the children are under eight years old. All of the children are receiving special remediation assistance in the public schools. Three of the five adults have high school diplomas, and the other two completed at least nine years of school. None of them possess the reading, writing, or math skills needed to get a job or keep one long-term. I wonder how much this costs us, and how much it will continue to cost us as their children grow.

While the regulations state that "contracts and arrangements may be made for services only to the extent that they are not otherwise available on a non-reimbursable basis," the preamble may suggest to states that they do not have to invest JOBS money in basic skill education, but rather they can rely on current ABE programs to provide these services. In addition, states could interpret the language as a prohibition for contracting services with Adult Education programs in order to have JOBS services available.

Their use of the term "traditional" is helpful because the traditional ABE program usually provides a minimum level of service (4-6 hours). Last year 3 million adults were served by our public ABE program. With the exception of Florida and California, states are serving less than 4% of those eligible for ABE services. Certainly programs like mine have been stretched to the limit. Imposing the additional burden of serving JOBS participants, without additional funds, would mean one of two things. I can drastically reduce my services to the public at large in order to accommodate welfare recipients, or I can continue to serve the general public and continue to provide limited services to welfare recipients. These services would not begin to fulfill the requirement of the FSA.

Two years ago Congress had a vision of welfare reform. If this reform is to reach its potential for freeing generations of America's underclass from the frustration of dependence and joblessness, Congress must make a commitment to quality education as a critical component of the JOBS program. This can not be accomplished solely through coordination. There can be no substitute for investment. Without a substantial investment now, our nation will be paying for generations to come.

I and thousands of professional adult educators at local, state, and national levels are able to assist other human service agencies realize the vision of the JOBS program.

Acting Chairman DOWNEY. Mr. Greenberg.

STATEMENT OF MARK GREENBERG, SENIOR STAFF ATTORNEY, CENTER FOR LAW AND SOCIAL POLICY

Mr. GREENBERG. Thank you, Mr. Chairman. I appreciate the opportunity to be here today.

I share the concerns that have already been raised about the very rigid definitions of participation in the program. I want to raise another concern about the regulations, and that is how they seem to limit access for volunteers to the JOBS Program.

Many recipients don't need to be required to participate in education and training, but gladly will do so if given a chance. Congress recognized that when it enacted the Family Support Act by putting in protections for volunteers. Unfortunately, the proposed regulations undercut every protection.

The act says within the Federal target groups, States are required to give priority to volunteers. The rationale is that among those recognized as most in need of services, those whose States ought to be targeting in this program, Congress mandated a priority for those who volunteer.

The regulations undercut the congressional mandate in a couple of ways. First, the preamble to the regulations say that States can make decisions about priority services based on the need to meet participation rates, based on program goals, based on available resources. In practice, this is going to severely cut back on volunteer access to the program.

Let me offer an example. Suppose we have a recipient in a target group because she has been on AFDC for the past 3 years, but she is exempt because she had a 2-year-old child. She wants to participate in a skills program for 15 hours a week. If the plan is a reasonable plan, the State ought to be encouraging that participation. But under the preamble, the State can reject the request no matter how reasonable it is because 15 hours won't help the State meet that 20-hour rule for participation rates.

This also suggests one of the perverse effects that may result from the 20-hour rule. Instead of focusing on trying to maximize activity by target group members, States will instead be driven to look at individuals who are trying to gain services from the program from the standpoint of, will this person help us meet the rates or not?

It will be a real disincentive toward States trying to provide services to parents with very young children.

There is another way in which the regulations limit volunteer access to the program and that is by sharply cutting back on what seemed to be the statutory rights to child care and transportation and supportive services for persons participating in JOBS.

The act says States have to provide necessary transportation and other support services for any individual participating in JOBS. Instead, the regulations limit the right to persons required to participate by the State. When the act talks about child care it says the guarantee applies to each individual who is satisfactorily participating in improved education and training including the JOBS Program. But as evidenced by the preamble, and as Mr. Rolston indicated this morning, in HHS' view, States only have to guarantee child care which is necessary for people to participate in a JOBS activity the State is requiring.

As a practical matter, to tell somebody with a 2-year-old child she is welcome to participate in the program but it has to be for at least 20 hours a week and the State isn't going to provide child care and isn't going to provide transportation, that is really the exact thing as telling her she can't participate in the program.

Congress had wanted a program that was going to be accessible to the target group volunteers and the regulations seem to take the opposite approach.

Let me briefly talk about a couple of other concerns. I had anticipated talking this morning about the regulation which would seem to say that the States could cut off AFDC to a child based upon grades.

I was pleased to hear Mr. Rolston say the Department will look at addressing that issue. But I think there is still one other problem in how the education requirements may relate to participation rates. Most of the morning's discussion has focussed on the 20-hour rule for participation rates. However, in education, the standard is framed as "making satisfactory progress" in order to count as a participant.

This standard will mean that if somebody is attending, making her best efforts, but doesn't do well enough, she doesn't count as a participant. From the standpoint of States trying to decide what are the appropriate program components for someone, this poses a problem the message to the State is that if it is a close case, it may not be a good idea to provide education to that person, because if it doesn't work out, the State runs the risk that the person doesn't count as a participant and the State has gotten no credit for her.

This runs the risk of distorting and discouraging the use of education in the program.

That leads me to my final comment this morning, and that is that in looking at the whole participation rate question, it seems to me that one perspective comes from focusing on the practical difficulties of obtaining the 7-percent rate and the 20 hours and so forth.

The other perspective is really focusing upon whether the definition of participation is helping or hurting the States in trying to structure what is appropriate for people. The basic premise of the law is that each individual will receive an assessment, that an individual employability plan will be structured for her, and the State will do what makes sense based upon that plan.

At the case worker level where the programs are implemented, if instead what you say is you need to hit 20 hours a week to count as a participant, then that changes the whole dynamic. It means instead of looking to what components make sense, you look to see "How do we fill up the person's time?" Particularly when different components are weighted differently, it means you look to find out what are the easiest way to fill up a person's time.

The only way to be true to the basic premise of saying that you will structure individualized activities based on what makes sense for the individual is to ensure the definition of participation isn't something that distorts a decision about what are the appropriate components and sequence in which they should be provided.

I very much hope the final regulations recognize that. Thank you.

[The statement of Mr. Greenberg follows:]

STATEMENT OF MARK GREENBERG, SENIOR STAFF ATTORNEY, CENTER FOR LAW AND SOCIAL POLICY

Members of the Subcommittee:

My name is Mark Greenberg. I am a Senior Staff Attorney at the Center for Law and Social Policy. The Center for Law and Social Policy is a public interest law firm which engages in advocacy on issues affecting low income families. Since enactment of the Family Support Act, we have been actively involved in analyzing, writing and speaking about state choices in implementing the JOBS Program.

Today, I want to raise concerns about how AFDC recipients may be affected by the proposed JOBS regulations in four areas. First, I will focus on the severe harm that the proposed participation rates will cause for recipients. Then, I will focus on how the regulations treat individuals who want education and training; deal with problems in program participation; and affect educational requirements for recipients under the age of eighteen. In each area, the proposed regulations seem inconsistent with Congressional intent, and in some instances, inconsistent with clear statutory language.

To avoid presenting the Committee with repetitive testimony, I have limited my comments to the portions of the proposed regulations that concern the JOBS activities and components, and my testimony does not address the many child care concerns raised by the proposed regulations. I do wish to note that I am in full agreement with the analysis of child care issues being presented to the Committee today by the Childrens' Defense Fund.

The Proposed Definition of Participation Will Distort Decisions About Appropriate Activities For Participants.

The states present a compelling case that state compliance with the proposed participation standards is not feasible. I want to go a step further, and suggest that even if it was feasible for states to comply, it would be against the best interests of many of the recipients affected by the JOBS Program.

The definition of participation ought to be used to measure state activity, not to distort decision-making about what kind of activities make sense for recipients. The basic principle of the JOBS Program is that the state and the recipient will work together to structure activities for the recipient that are appropriate in light of the recipient's skills and needs. The proposed definition would violate this principle, because it would discourage states from providing activities that are appropriate, and would encourage states to require activities that aren't appropriate.

First, I want to discuss how the definition would discourage states from providing appropriate activities. Congress has repeatedly emphasized the critical importance of education activities in the JOBS Program. But under the proposed definitions, a recipient in education will only count as a participant if she makes satisfactory progress. This mixes up two different issues: whether the person is actually participating, and whether she's doing well. In many instances, a person will be actively attending, making her best efforts, and not attaining the academic level set for satisfactory progress. If she is making her best effort but not getting good grades, it may be appropriate to reassess her needs and activities, but it is not appropriate to say that she no longer counts as a participant.

Use of the proposed standard may make states fearful to provide education in many cases. From the state's standpoint, using an educational component is a risk, because if the recipient doesn't make satisfactory progress, she doesn't count toward participation rates. As a result, recipients may be denied needed education.

The proposed definition will also deter states from offering work supplementation and on the job training in appropriate cases. The definitions say that a recipient must be participating in Work Supplementation or OJT on a full time basis to count as a participant. So, states will get no credit for structuring graduated or part time placements. States may find it easier and cheaper to use activities that only last 20 hours rather than to rely on a component where the time commitment must be twice that length. So recipient access to OJT and work supplementation is likely to be impaired by the proposed regulations.

At the same time that the regulations discourage use of education, work supplementation, and OJT, the regulations may encourage use of components like job search and work experience at times when they are inappropriate. This becomes apparent when we consider how the general twenty hour rule for other components is likely to work if states are forced to implement it.

As states try to identify contractors for skills training and job readiness programs, they are likely to find that most pre-existing programs don't run exactly twenty hours a week. Rather, some are more, and some are less. So, when a state finds a fifteen hour a week skills training course, the state has only three choices: forget it, and look for another one that takes longer; use it, and don't count the recipient as a JOBS participant; or use it, but structure some other activity to fill up five more hours a week of the recipient's time. As a practical matter, job search and work experience are the only kinds of activities that can readily be assigned as five hour slots.

It is one thing to assign job search or work experience because through an assessment and employability plan, it has been determined that such an activity is the most appropriate activity for the individual. It is another thing to assign the activity just because the state is trying to figure out how to fill up a recipient's time in order to meet the program definition of participation.

The concern goes further. Many states may find it administratively complex to combine two or three components to attain twenty hours of activities each week. It may be far simpler to just require job search or work experience, where the state can arbitrarily set the number of hours, than to identify skills training and job readiness components that may or may not correspond to the hours requirements imposed by HHS. As a result, the hours rule may drive states to reduce their use of skills training and job readiness components in their programs.

The fundamental problem suggested here is that the proposed definition will distort basic judgments about what components recipients need and should have. In enacting the FSA, Congress set forth a list of required program components, a list of optional components, and gave states the flexibility to decide on their own relative emphases and program mixes, in light of state resources and recipient needs. The program definition of participation should not stack the deck in favor of or against particular components, and it should not punish a state for setting activities that are appropriate for the individual. The HHS definition has precisely this effect, and needs to be substantially revised.

The Regulations Improperly Restrict Program Access For Persons Who Want Education and Training

When enacting the Family Support Act, Congress recognized that many AFDC recipients do not need to be mandated to participate in education or training; rather, they will gladly participate if given an opportunity to do so. Accordingly, the FSA contains a number of protections for persons wanting to volunteer to receive education and training. Unfortunately, the proposed regulations undercut every one of these protections.

The FSA provides that states must inform all applicants and recipients of the program, and must notify recipients of the opportunity to indicate their desire to enter the program, including a clear description of how to enter the program, within one month of this orientation. Sec. 482(c). The regulations track this statutory provision, but do not say that a state must do anything in response to a request to enter the program. [Proposed] §250.40. A request to enter the program may be left pending indefinitely.

Second, the FSA provides that, within the federal target groups, states must give priority to those who volunteer to participate. Sec. 402(a)(19)(B)(ii). By enacting this provision, Congress did not create a general priority for volunteers, but said that among those groups viewed as most in need of services, first priority should be given to those who volunteer. The proposed regulations, at §250.31, repeat the statutory requirement. But language in the preamble gives the regulation a completely different meaning. The preamble says that the priority for target group volunteers does not usurp the state's ability to determine the type of program it offers, because:

> Several factors may affect a State's decision on priority services including (1) goals of the State program, (2) availability of resources, and (3) the effect of selection of individuals to participate on the State's ability to meet participation rate standards.

54 Fed. Reg. 15649. An example will show how the reference to participation rates undercuts the priority for target group volunteers. Suppose a recipient is a target group member because she received AFDC for the last 3 years, but she's exempt because she has a two year old child. She wants to volunteer and participate in a skills training course for fifteen hours a week. The state ought to be considering whether this is a reasonable activity plan, and if the plan will help her toward self-sufficiency, the state should encourage the participation. But under the preamble, the state may reject her request, no matter how reasonable and appropriate it may be, because fifteen hours of activities won't help the state meet the twenty hour rule to satisfy participation rates under the proposed definition of participation.

This turns Congress' priorities upside down. Congress wanted to emphasize participation by target group members. In fact, the only place where the statute says a state may limit volunteers is if such a limit if necessary to assure that at least 55% of state resources go to target group members. Sec. 402(a)(19)(B)(iv). In contrast, Congress did not say that states could or should deny target group members access to program services in order to help improve a state's participation rate. By giving a higher priority to satisfying a definition of participation than to facilitating activities by target group members, the regulations seem to suggest that measuring participation is more important than obtaining results.

Unfortunately, the regulations further limit program access for volunteers. Even if a volunteer agrees to participate at a level that counts toward participation rates, the state may still effectively exclude her under the view contained in the preamble, by denying supportive services. The FSA says that for any individual participating in JOBS, the state must provide for transportation and other work-related expenses, including supportive services, which are necessary to enable the individual to participate. Sec. 402(g)(2). The proposed regulations instead say that the state must provide for supportive services determined necessary for an individual to participate as required in JOBS. [Proposed] §255.2(c). In other words, the mandate for transportation and supportive services only applies to those required to participate.

Similarly, the FSA guarantees child care to each individual participating in an education and training activity, including JOBS, if the state approves the activity and determines the individual is satisfactorily participating. Sec. 402(g)(1). But preamble language says that child care must be guaranteed only to the extent necessary for an individual to accept or retain employment, or to participate in a JOBS activity the state is requiring. 54 Fed. Reg. 15670.

There is no basis in the FSA for this distinction between child care and supportive services for volunteers and for persons required to participate. But under the HHS view, the state can advise a target group member with a two year old that she is welcome to participate, but the state will not provide her with child care or transportation. As a practical matter, this is no different from telling her she cannot participate.

By its treatment of target groups, and child care and supportive services, Congress demonstrated that it wanted a program that was accessible to parents of young children. It is inappropriate for HHS to use federal regulations and preamble language to invite states to deny that access.

The Regulations Do Not Provide Basic Procedural Protections for Persons Facing Problems in Program Participation

When addressing recipient protections in the sanction and dispute resolution process, the Department has been unwilling to establish minimal standards to protect recipient rights.

The FSA provides that each state must establish a conciliation process for resolution of disputes involving an individual's participation in the program. Sec. 482(h). Conciliation should be a critical step, because the goal of the program shouldn't be to sanction. Rather, it should be to identify and resolve the problem that is preventing participation.

The FSA doesn't define conciliation. But the word "conciliation" was taken from the WIN Program, where it had a clear meaning. The WIN Handbook explains conciliation is to occur when a person refuses to participate without good cause, and that the purpose of conciliation is to utilize all appropriate program resources to remove social, economic, physiological and psychological barriers to participation in the program and within program limitations, without compromising program standards and integrity. The WIN Handbook mandates that a state at the conciliation stage must make at least two attempts to contact the individual personally, and arrange a face to face interview if possible. Where a need for social services is the reason for non-participation, staff should work with the person to plan and initiate activities to remove barriers.

The proposed JOBS regulations reflect a different approach. They provide no definition of conciliation, and set no minimum standards. Instead, the regulations simply say states must have a conciliation process, and describe it in their state plans. [Proposed] §250.21(c)(1), 250.36. The preamble offers general and non-binding guidance. 54 Fed. Reg. 15652. Under the regulation, states appear to be free to set up a minimal process, which may involve nothing more than a warning that the individual will be sanctioned if she doesn't participate.

The proposed regulations are equally skeletal in their treatment of good cause for failure to participate. The FSA does not include a general list of instances that constitute good cause for failure to participate. It only describes several situations relating to child care problems and failure to accept employment if it would result in a net loss of income Sec. 402(a)(19)(G), (H). Since this is plainly not intended as a comprehensive list of examples, many persons anticipated that HHS would use the regulations to set out minimum standards that states must recognize for good cause purposes. Instead, the proposed regulations merely follow the statutory language. [Proposed] §250.34. The regulations then provide that the state may set other grounds for "good cause" in its JOBS plan. §250.34(d). The preamble notes that these could include such events as inclement weather, breakdown of transportation and/or child care arrangements, short-term illness not requiring a doctor's care, or a family emergency. 54 Fed. Reg. 15651. However, whether to count these or any other instances appears left to the discretion of the state. Surely many states will develop their own detailed and thoughtful listings of good cause; but the reason for federal regulations should be to set minimum safeguards, and these regulations don't set any.

The proposed regulation concerning sanctions appears to directly violate the FSA. The FSA provides that in the case of a first offense, a recipient's sanction will last until the failure to comply ceases. Sec. 402(a)(19)(G)(i). In contrast, the proposed regulation provides that for the first offense, states may require some sort of participation (to be defined by the state) for up to two weeks before removing the sanction. [Proposed] §250.34(b). This seems flatly inconsistent with the FSA. The statute says the sanction shall continue "until the failure to comply ceases," not until two weeks after the failure to comply ceases.

Taken together, regulations on dispute resolution seem to let states have a negligible conciliation procedure, a minimal definition of good cause, and onerous reinstatement procedures which prevent a recipient from ever curing her first sanction. There is no justification for HHS allowing such unrestricted discretion in areas central to the protection of recipient rights. I appreciate the importance of state flexibility in operating the JOBS Program, but Congress envisioned a structure that assures basic procedural safeguards for recipients, and the proposed regulations do not provide those safeguards.

Proposed Educational Requirements for Recipients Under Eighteen Appear Inconsistent with the Language and Intent of the Family Support Act

Finally, HHS' approach to educational requirements for recipients under eighteen also seems inconsistent with the language and intent of the FSA in two respects.

The FSA has a general requirement that custodial parents under 20 who have not completed high school or its equivalent must be required to participate in an educational activity, subject to state resources and program availability in the political subdivision. Sec. 402(a)(19)(E)(i). The FSA then provides that states may exempt those under 18 from the requirement, under criteria adopted in accordance with HHS regulations. Sec. 402(a)(19)(E)(ii)(II). In contrast with the statute, the proposed regulations provide that a state may only exempt a custodial parent under 18 from the requirements if the parent is beyond the state's compulsory attendance laws, and if the state's JOBS plan contains criteria, which i) provide for individualized rather than categorical exemptions; ii) do not solely rely on grade completion; and iii) provide for participation in another educational activity. [Proposed] §250.32(a)(2).

Restricting the ability of states to exempt parents under 18 seems inconsistent with Congressional intent. The issue here is not whether young parents should get an education; the issue is what is the best way to reach that result. In recent years, some states have expressed interest in relying on mandatory school attendance requirements for AFDC parents, with the threat of grant termination for a teenager who does not stay in school. And, those states are free to pursue that strategy under the FSA.

But there is no broad consensus on whether it is sound educational practice or social policy for a state to threaten to cut off the income of a young parent in order to encourage school attendance. There are many reasons to believe this may not be the best approach:

o If the school is not able to provide flexible scheduling, an appropriate curriculum, and needed supportive services, a mandated return to school may result in little learning and a long run negative impact on the young parent's attitude toward education.

o Teachers and administrators that have not previously known students' status as welfare recipients may now filter their educational judgments based on the special rules and expectations that will apply to this group.

o Under a literal reading of the HHS regulations, states would begin applying their school attendance requirements the day after the child of a teen parent was born. This could severely disrupt initial bonding and the teenager's development of parenting skills.

o Infants and other family members will suffer lost income for basic needs when the school and welfare department conclude that an AFDC recipient is not meeting their mandated attendance requirements. While any positive effects on the teen parent are at best uncertain, the adverse effects on the receipt of subsistence income by other family members is clear.

Despite these concerns, some states implementing the FSA may choose to require school attendance by very young parents, and to rely on the coercive effect of possible grant reduction. They are entitled to do so under the law. But other states will want to explore alternative approaches, relying on enriched programs and voluntary services. Congress did not mandate one single approach. Instead, the FSA envisioned that states would have the flexibility to exempt persons under 18 from mandatory requirements, so that those states that wish to emphasize voluntary participation and positive incentives may do so. Yet the proposed regulations deny states that flexibility.

Finally, one of the most disturbing provisions of the proposed regulations is hidden among the changes HHS labels as "Technical and Conforming Amendments." Current AFDC regulations prohibit a state from denying AFDC to a child under eighteen because of failure to make satisfactory grades. 45 C.F.R. §233.90(b)(2). HHS proposes to eliminate this protection. 54 Fed. Reg. 15673. HHS suggests that the current provision is inconsistent with Congressional concerns about school attendance for teen aged recipients.

There is a major difference between school attendance and grades. If a child is attending school but not making high enough grades, it may make sense to reassess her needs, and identify services that could help her. But Congress did not suggest that when a child is making her best efforts, the state is free to cut off her AFDC income because a caseworker doesn't approve of her grades. AFDC families already live on the margins of subsistence. The idea that such families might face eviction if their children don't perform well on tests at school is profoundly disturbing. The proposed regulation repeal is unwise, unlawful, and certainly not technical.

Conclusion

I appreciate the very open process that HHS has used in developing its proposed regulations, but believe that the final product needs significant revision to comply with the language and intent of the FSA.

STATEMENT OF NANCY EBB, SENIOR STAFF ATTORNEY, CHILDREN'S DEFENSE FUND

Ms. **Ebb**. The Children's Defense Fund appreciates the opportunity to testify today. We followed closely Congress' work on the act and continue to work on State implementation efforts.

We have requested the opportunity to appear today because of our serious concerns with some of the proposed child care regulations. I would like to start my testimony by thanking the subcommittee for its efforts to protect and strengthen these child care regulations and for its recognition of the critical importance of child care to helping families become self-sufficient.

Unfortunately, the regulations undo many of those child care guarantees that Congress so carefully crafted in the Family Support Act. Congress included a strong guarantee for child care in the act. The statute clearly states child care is guaranteed for two groups of individuals, families for whom child care is necessary to retain employment and families for whom child care is necessary to engage in education and training programs, both through the JOBS Program and as Mr. Greenberg correctly points out for individuals in self-arranged education and training programs—so long as those placements have been approved by the State and parents are satisfactorily participating in them.

The statute identifies clearly what the limitations are on that entitlement. These are, however, the only conditions that the statute appears to allow on the entitlement. The proposed regulations unfortunately stand the statutory guarantee on its head. The States must guarantee child care under the regulations to mandatory participants or excuse their failure to participate and they must indicate in their State plan how they will ensure sufficient child care is available to meet participation rates.

There is no assurance that volunteers, even those within the target groups Congress was so concerned to address, will be given child care necessary for them to participate. There is no guarantee that child care will be provided for families who are not required to participate in the JOBS Program but who self-arrange education, or training programs and who need child care to participate in those programs.

We know from both Massachusetts and California that participants of young children do volunteer if child care is provided to them. The regulations' child care restrictions will have devastating implications on a State's ability to serve the needs of these groups.

We have heard from Mr. Rolston that HHS believes their interpretation of the guarantee is the legally correct one. It is difficult to understand that interpretation given that the guarantee is phrased in terms of each individual and family who needs child care.

If Congress had intended to allow States to limit the guarantee, surely it would have not addressed the guarantee to each individual. I would also note the guarantee language for recipients is identical to the guarantee language used to ensure child care is available to transitional families. If Congress had intended to make a distinction in the nature of the entitlement between transitional and recipient families, surely it would have used different language to describe the nature of the guarantee for those two groups.

The regulations also improperly restrict a State's ability to set child care rates at realistic levels.

The statute allows States to pay more for child care than the limits set by the child care disregard and obtain Federal matching funds so long as the State payment does not exceed local market rate. This provision is a very important one since the child care disregard limits are often inadequate to purchase quality care.

A Johns Hopkins study for the State of Maryland, for example, found that in 1986 the statewide average cost of regulated family day care for 2- to 5-year-olds was $203 a month. In the highest cost county, the average cost of such care was $303 a month, $128 more than the disregard limits would allow.

So State flexibility to pay more is important if a State is genuinely going to be able to provide child care to participants in the programs. The regulations, however, limit reimbursement to the 75 percentile cost of local care, a restriction that is not authorized by the statute, which provided for no such cap on local market rate.

This cap inhibits a State's ability to obtain child care for families with special needs. As Mrs. Johnson correctly noted, many of the families whose needs are being addressed by this program do have special needs. Children need developmentally enriched child care. We recognize the statute does not require States to provide enriched care, but we believe that the statute did intend to give States the flexibility to provide such care to families that genuinely needed it, for example, children of teen parents where both the child and the parent may be at particular risk.

Finally, the regulations improperly limit access to transitional care. We know from experience in States that already have State transitional child care programs that many families disappear once they leave the AFDC rolls and don't get subsidized care—even though they were receiving such care while they were on the rolls and we believe they would be eligible for transitional child care services under the State transition plan.

In California, for example, MDRC found 68 percent of the voluntary participants in the GAIN Program were receiving State subsidized care while they were on the rolls. That dropped to 24 percent once the families left the rolls even though it appeared they should have been eligible for transitional child care under the State's plan.

The reapplication proposal will severely limit even further families' ability to get access to transitional care since it creates another unnecessary barrier to receipt of those benefits which we had believed would flow automatically if families met the requirements for the entitlement.

We appreciate the opportunity to appear before the subcommittee today and to share our concerns. We hope to work closely with you in the coming months to ensure that the regulations more faithfully echo Congress' intent to construct a child care program that meaningfully addresses the needs of recipients in these programs.

Thank you.

[The statement of Ms. Ebb follows:]

STATEMENT OF NANCY EBB, SENIOR STAFF ATTORNEY, CHILDREN'S DEFENSE FUND

The Children's Defense Fund ("CDF") appreciates the opportunity to testify today on proposed regulations implementing the Family Support Act. CDF is a privately-supported public charity that advocates for the interests of low-income children. CDF followed closely Congress' consideration of the Family Support Act, and continues to work intensively with advocates and state officials as they begin to implement its provisions. We have requested the opportunity to appear today because we believe certain aspects of the child care regulations proposed by the Department of Health and Human Services (HHS) seriously undermine some of the Act's potential for significant reform, and in a number of instances *violate the spirit and letter of the law.* 1/

We are extremely appreciative, Mr. Chairman, of the leadership you and other members of the Subcommittee took in holding firm for the strong child care provisions in the Family Support Act. The carefully crafted child care provisions offer states the opportunity to establish a child care system that meets the needs of AFDC children and at the same time enables their parents to move toward self-sufficiency. Unfortunately, the proposed regulations undermine these child care provisions in fundamental and troubling ways.

I. THE REGULATIONS UNDERCUT THE ACT'S GUARANTEE OF CHILD CARE.

Congress, during its consideration of the Family Support Act, heard repeatedly from Governors, state officials, and advocates about the critical need for child care if efforts to assist parents towards self-sufficiency were to be successful. Congress responded by including a strong guarantee for child care in the Act.

The statute clearly states that child care is guaranteed for two groups of individuals: families for whom child care is necessary to accept or to retain employment, and families for whom child care is necessary to engage in education or training activities (both through the JOBS program and through self-arranged programs). Sec. 402(g)(1)(A)(i). The guarantee is stated as an entitlement: states must guarantee care to each family or individual. The statute identifies clearly the limitations on the entitlement: for families in employment, there must be a determination by the state that the care is necessary for the individual to accept or retain employment; for individuals in training or education programs, the state must approve the activity and determine that the individual is satisfactorily participating. These are the only conditions on the entitlement. Indeed, to underline the seriousness of its promise of child care, the Senate strengthened its description of the child care provision by replacing a provision that the state "assure" child care with the provision that the state "guarantee" such care.

The proposed regulations gut this promise of care. Although one section of the regulations restates the statutory guarantee, Sec. 255.2(a), the Preamble describes the guarantee as a "conditional entitlement," not a right for families that meet the statutory criteria. 54 F.R. at 15666, 15670. The Preamble provides that states can limit the guarantee by failing to allocate sufficient resources to meet the need:

1/ In response to the Subcommittee's request that interested groups with common positions coordinate their presentations, CDF's testimony focuses only on child care issues. We also have a number of concerns about the education, employment and training regulations, and urge your serious consideration of testimony by the Center for Law and Social Policy.

> The guarantee may be limited by State appropriation ceilings, the available supply of other State, local and federally-funded services, such as Title XX services, and the target group priorities. A State IV-A agency is not required to treat child care benefits under this Part of the proposed regulations as an absolute entitlement and to provide all employed recipients and participants in JOBS with child care benefits...54 F.R. at 15666.

The proposed regulations reflect the Preamble's limited reading of the guarantee. In describing the state plan, they state that it must describe:

> the priorities to be applied in determining when needed child care will be guaranteed for accepting or maintaining employment and for education or training, including JOBS participation. Sec. 255.1(d).

If the guarantee were interpreted as the Act intended, there would be no need to establish priorities among families to such care, since all eligible families would receive it.

The proposed regulations guarantee child care to far fewer individuals than Congress intended: states must guarantee child care for mandatory participants (or excuse their failure to participate), Sec. 250.35(b); and they must indicate in their state plan how they will assure sufficient child care to meet JOBS participation rates. Sec. 255.1(j). There is no assurance that volunteers--even those in the target groups that Congress directed should be served first by the JOBS program--will be given the child care necessary for them to engage in employment, education, or training programs. We know, however, from both the Massachusetts and California welfare-to-work experience that parents of young children do volunteer when child care is provided. The regulations' child care restrictions have devasting implications for these parents' ability to participate.

Limiting access to child care for JOBS volunteers and parents in self-arranged education, employment and training programs is contrary to the intent of this Subcommittee and of the conferees. In H.R. 1720, the House was clear that child care should be provided both to mandatory and voluntary participants in the NETWork program (now JOBS), and that child care should be provided as well to participants who were exempt from NETWork participation requirements but who were participating in other employment, education, or training activities (so long as child care was necessary to such participation and was cost-effective). Sec. 201(a)(1), H.R. 1720. The original Senate child care provision was limited to JOBS participants. The conference provision expanded significantly on the Senate provision, specifically providing that the guarantee applies to parents in approved education and training programs outside of the JOBS programs, as well as to employment outside the JOBS program. The conference did not reject the House requirement that necessary child care be provided to volunteers as well as to mandatory participants. HHS apparently seeks to limit by regulation what the conferees were unwilling to limit by statute.

The regulations also undermine the statutory guarantee in other ways:

> o Because HHS views child care for AFDC recipients as only a "conditional entitlement," it does not extend prior hearing rights to AFDC families if the state proposes to reduce or terminate child care benefits, or change the nature of those benefits. 2/ While recipients are entitled to a fair hearing, it need not be a prior hearing. Sec. 255.2(h), Preamble at 15670. This violates the Family

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2/ If a change in method affects AFDC grant levels, however, prior notice requirements do apply. Preamble, 54 F.R. at 15670.

Support Act, which specifically requires state procedures for resolving JOBS-related disputes that comply with the due process requirements of *Goldberg* v. *Kelly*, 397 U.S. 254 (1970). Sec. 482(h). *Goldberg* held that recipients of subsistence benefits are entitled to prior notice and the opportunity for hearing before benefits can be terminated or reduced. The need for a hearing *before* child care benefits are terminated or reduced is compelling: when state assistance is cut off, families are likely to lose their child care, and may be forced to drop out of employment or training--consequences that cannot be easily reversed if a hearing later determines that the state decision was incorrect.

o The regulations also limit the child care guarantee to care for children through age 12, and to older children who are physically or mentally handicapped. Sec. 255.2(a). No such restriction is authorized in the Family Support Act. Many states now recognize the child care needs of older poor children. A CDF survey of 42 states that provide child care through their Title XX programs found that twenty-one states either pay for care up to a specified age that is greater than 12, or set no age limit. Kansas, for example, pays for child care up to age 16, while Michigan, Ohio, Tennessee, Washington state, and West Virginia pay up to age 15. We believe that states should be required to pay for care through age 12, and given the option to pay for children over age 12. Moreover, we believe that the regulations' verification requirements for establishing that handicapped children need care are excessively burdensome, and should be made more flexible. (*See* Sec. 255.2(a)).

II. THE REGULATIONS LIMIT STATES' FLEXIBILITY TO DESIGN A STRONG CHILD CARE SYSTEM.

Designing an effective child care system for AFDC families is a challenge for states that want to do it right. The supply of appropriate child care for poor families is limited, in part because reimbursement levels are so low and in part because many providers are reluctant to accept subsidized families, seeing them as clients who require more intensive services. Moreover, many families have little experience with formal care, and need thoughtful assistance in assessing their child care needs and in obtaining appropriate care. The most appropriate care for many poor children is developmentally enriched care, which results in such long-term rewards as lower dropout rates, improved school performance, and lower delinquency rates. Parents also need child care for their children that provides continuity and an ongoing relationship with a provider. Child care needs do not end with the last AFDC check: parents who work their way off the AFDC rolls are still vulnerable and need continuing child care support to remain self-sufficient.

The Family Support Act gives states the tools to create a child care system that responds to these needs by allowing them to set reimbursement rates closer to the real cost of purchasing care; by requiring them to offer child care counseling and referral services; and by providing a year of transitional child care benefits when a family leaves the AFDC rolls due to earned income. The regulations, however, severely restrict states' ability to serve families' child care needs through these mechanisms.

A. *The Regulations Improperly Restrict States' Ability to Set Child Care Rates at Realistic Levels.* The statute allows states to pay more for child care than the limits set by the child care disregard ($175/month for older children, $200/month for infants and toddlers), and to obtain federal matching funds so long as the rate does not exceed the local market rate. Sec. 402(g)(3)(B)(ii). This provision is important, since the child care disregard limits are often inadequate to purchase quality care:

- A Johns Hopkins study for the State of Maryland notes that in 1986 the statewide average cost of regulated family day care for 2-5 year olds was $203/month. In the highest cost county, the average cost of such care was $303/month--$128 more than the disregard currently allows.

The regulations, however, limit federal reimbursement to the 75th percentile cost of local care. This limit is unauthorized by statute, and is bad policy as well:

- It inhibits states' ability to obtain child care for families with special needs (e.g., handicapped children or children of teen parents), or to provide developmentally enriched care where appropriate;

- It is more restrictive than existing state policy in some welfare-to-work programs (California and Washington state, for example, have rates that allow participants to purchase 90 percent of care in the locality); and

- It limits states' ability to persuade providers to accept welfare-to-work children. The Hopkins study found that for Maryland's Project Independence to meet its target goal and reduce Maryland's AFDC rolls by 10 percent, the state would need 5,000 new subsidized child care slots. If states cannot pay providers a competitive rate, they cannot purchase enough child care to meet AFDC recipients' needs.

The regulations appear to further limit states' market rate flexibility by providing that states can only establish market rates for the types of care identified in the regulations. At a briefing by HHS staff, we were told that states could not set separate market rates for children with special needs (for example, handicapped children or children of teen parents), although these children may have child care needs that increase the cost of appropriate care. Thus, states will not be allowed to develop market rates that realistically reflect the costs of caring for these at risk children. Moreover, since the regulations also prohibit use of AFDC special needs assistance for child care, states have no other mechanism to augment inadequate payment levels for special needs children.

B. The Regulations Improperly Deny Federal Matching Funds for Provider Recruitment and Resource Development. The Family Support Act requires states to provide child care counseling to JOBS participants. This includes providing information on the types and locations of child care services reasonably accessible to program participants; and, upon request, providing assistance to participants in selecting and obtaining appropriate child care services. Sec. 482(c)(3). In order to provide this counseling effectively, the state will have to learn (directly or through arrangements with others) where appropriate providers are located, whether they have openings and are willing to accept JOBS participants, and negotiate payment agreements with the providers. Moreover, as proposed regulations require, the state will have to take measures to ensure that sufficient child care is available to meet participation rates.

The regulations, however, provide that "(n)o Federal matching is available for the recruitment or training of child care providers, resource development, or licensing activities." Sec. 255.4(f). Such a restriction on funds for recruitment and resource development is contrary to what the federal statute requires states to do, and is unauthorized.

C. The Regulations Improperly Restrict Access to Transitional Care. The Family Support Act creates a one-year entitlement to continuing child care assistance if a family loses AFDC due to employment, has received AFDC in three of the six preceding months, and the state determines such care is necessary for the caretaker's employment. Sec. 402(g)(1)(A)(ii). The proposed regulations require that, in order to get these transitional benefits, families must complete a separate application for benefits. Moreover, benefits cannot be received retroactively back to the date when AFDC was terminated. Rather, they can be received only as of the date of reapplication.

Such a policy would likely mean that many eligible families will never be provided essential transitional benefits. Others whose reapplications are delayed will lose the full twelve months of benefits and may suffer gaps in child care that cost them their jobs. Families have already experienced serious problems obtaining transitional benefits in states with state-funded transitional programs:

o In New York State, where state regulations require that local social services districts provide all clients information regarding state child care options available to them, 83 percent of recipients surveyed by Statewide Youth Advocacy reported that their worker did not tell them they were eligible for transitional child care assistance.

o In California, where the GAIN program provides three months of transitional child care, only a fraction of families who appear to be eligible for transitional benefits actually receive them. Data from the Manpower Demonstration Research Corporation indicate that 68% of GAIN volunteers studied used state child care funds, but only 24% who left the program due to employment used transitional child care funds.

The requirement for a separate application is unauthorized by statute, and departs from HHS' longstanding practice of continuing transitional Medicaid benefits without requiring reapplication. It burdens both state and recipient, requiring additional paperwork when the state--which has just reviewed the family's income in order to determine it ineligible for AFDC--presumably has all the current financial information it needs. Final regulations should not require reapplication. However, they should require that AFDC families receiving child care be notified in advance if the form of payment will change once they begin receiving transitional benefits (for example, if they have been receiving child care through the disregard and will have care paid for by voucher during transition), or if a fee for care will be charged; that there be no gap in child care assistance as families move from AFDC-linked child care to the transitional program; and that families leaving AFDC who have not been receiving child care assistance (for example, because their earnings immediately make them ineligible for AFDC) receive immediate notice of the opportunity to receive transitional assistance, beginning with the month in which they become ineligible for AFDC.

III. THE REGULATIONS COMPROMISE THE QUALITY OF CARE AVAILABLE.

Congress created some basic protections for children in care because of its concern that participation of parents in employment, education and training should not be at the expense of children's well-being. The proposed regulations undermine these protections.

A. The Regulations Limit Health and Safety Protections for Children in Center-Based Care. The statute requires that child care paid for through the Family Support Act must meet applicable state and local standards. Sec. 402(g)(3)(A)(ii). Recognizing that some center-based care was exempt from such standards, but believing that minimal health and safety protections are essential, Congress also required that states must establish procedures to ensure that all center-based care will be subject to state and local health and safety requirements, including fire safety provisions. Sec. 402(g)(4). The regulations suggest a contrary result. If center-based care is exempt from state or local regulation, they suggest the state is under no obligation to develop and apply basic health and safety protections to such exempt care. Rather, they suggest that the state must ensure that centers meet these health and safety standards only if they are *already* subject to such standards under state or local law:

> The State IV-A agency must establish procedures to ensure that center-based child care will be subject to *applicable standards* of State and local law including those *designed to ensure basic health, safety protection, and fire safety*. Sec. 255.5(a). [Emphasis added]. *See also* Preamble at 15669.

B. *The Regulations Improperly Encourage Informal, Child Care Arrangements*. A General Accounting Office report documents that in some states, welfare-to-work programs have steered recipients toward informal, unpaid child care arrangments before informing them that subsidized care is available. Responding to such concerns, the Family Support Act requires that AFDC applicants and recipients be informed of the availability of child care assistance, and requires that states guarantee necessary child care assistance. The Preamble to the proposed regulations, however, encourages states to resort to informal arrangments:

> o In discussing whether lack of necessary child care constitutes good cause for failure to participate, the Preamble directs that "...the State IV-A agency *should* determine whether there are any other individuals in the home who are capable of providing the necessary care." Preamble at 15651. [Emphasis added]. Thus, states are encouraged to conclude that informal care can be provided within the recipient's household even when the recipient asserts that such care in unavailable--an extraordinary intrusion by the state and an improper insistence that informal care be provided even when a relative appears unwilling to serve as a provider.
>
> o Similarly, the Preamble notes that "[f]requently, child care is provided through informal arrangements at no cost. The child care guarantee does not mean that paid child care must be available for every participant. In determining whether child care is necessary, the State IV-A agency may take into account informal care." Preamble at 15666. At a briefing by HHS staff, the regulations were interpreted as providing that a state could deny child care assistance based on a determination that informal care arrangements were available, even if the parent indicated that she did not want to continue using the unpaid arrangement. The rationale was that the state could determine that guaranteed child care was not necessary due to the availability of unpaid care. This interpretation means that a parent who has had no funds for child care and has patched together child care arrangements through the kindness of relatives can be denied child care assistance under the Act. However temporary or unsatisfactory those unpaid arrangements may be and however likely they are to fail, they can be used as evidence to deny child care benefits to those very parents we should want to encourage--parents whose determination to work has compelled them to eke out often inadequate unpaid arrangements before subsidized care becomes available.

While parents should be allowed to use informal arrangements if they choose, allowing states to deny subsidized child care based on past use of informal care arrangments is bad policy and bad law. Informal child care works best as a short-term, part-time arrangement. In California, the Child Care Law Center notes that informal arrangements typically break down as GAIN participants move into longer-term, more full-time activity.

Particularly given the regulations' insistence that mothers of young children participate 20 hours a week, we know that informal arrangements will break down, causing interruptions in participation and disruption for parent and child. HHS should be encouraging states to invest in stable child care arrangments that help parents move toward long-term self-sufficiency. The Preamble's emphasis on informal care is grossly misplaced.

* * * *

In undercutting the child care promises embodied in the Family Support Act, the Department of Health and Human Services is in effect denying the benefits of the Act to thousands of poor children and their families. Without adequate child care, parents cannot even begin to move toward self-sufficiency. We urge you to convey the concerns we have addressed to Secretary Sullivan, and to take all appropriate steps to ensure that final regulations more faithfully implement the promise of child care services embodied in the Act.

Acting Chairman Downey. Ms. Miller.

STATEMENT OF ANN D. MILLER, CHAIRMAN, PUBLIC POLICY COMMITTEE, ASSOCIATION OF JUNIOR LEAGUES, INC.

Ms. **Miller**. Good morning. My name is Ann Miller. I am the chairman of the Public Policy Committee of the Association of Junior Leagues and am a member of the Junior League of Baton Rouge, LA.

I am pleased to have this opportunity to present to you the association's views on the recently issued proposed regulations for the Family Support Act of 1988 as they pertain to the child care portions of the legislation.

I will summarize my testimony. Since 1981, child care has been a priority for the association, as well as for individual junior leagues. Only 2 weeks ago, delegates to the 67th annual conference unanimously approved a resolution recommiting the association to addressing the need for available, affordable, and quality child care.

Because of our longstanding commitment to child care and our strong support for the child care provisions included in the Family Support Act, we believe that the regulations proposed by the Department of Health and Human Services do not reflect the intent of Congress in passing the legislation. In our view, they fall short of ensuring that families receiving welfare will have the supports and services that are essential if they are to achieve and maintain self sufficiency.

I would like to address several points on which the regulations appear to undermine the intent of Congress and echo a number of concerns expressed here today. First, child care guarantee. The HHS regulations state that child care benefits are not required to be treated as an absolute entitlement or to be provided to all employed recipients or participants in the JOBS Program.

The conference report contradicts the limitation imposed by the proposed regulations. The report provides "that State agencies must guarantee child care to the extent that it is determined by the agency to be necessary for an individual's employment."

The Family Support Act guarantees child care for each family that meets the statutory criteria. Furthermore, once a family meets the statutory criteria, this guarantee is an entitlement. Throughout the development and passage of the Family Support Act, the association was a strong advocate for the guarantee of child care for families. The inability to find child care that is affordable, accessible, and of good quality is cited repeatedly as a major barrier to women on welfare who would like to find a job.

For example, the Junior League of Des Moines, IA, found that the assurance of affordable child care subsidized through their junior league project eliminated the barrier to self sufficiency that these Iowa women faced. In guaranteeing child care in the act, it was clearly the intent of Congress to provide families with the child care services which are developmentally sound for children and which are sufficiently stable to ensure the long-term self sufficiency of the participants.

In the area of Federal reimbursement for child care, HHS provides for the local market rate to be established at the 75 percentile. The act provides that States can receive Federal reimbursement for child care as long as those amounts do not exceed the applicable local market rate. This proposed limitation would have an adverse impact on the supply of child care for families in need.

In addition, following testimony before this subcommittee on welfare reform in 1987, the association responded to Representative Pease's request that we review the proposed legislation language on child care in H.R. 1720.

In a letter dated March 26, 1987, we stated "that we would prefer to have the legislation require that the subsidy cover the market rate of care. We also believe that child care assistance should be provided until the parent or parents are no longer qualified for a subsidy under their State's child care program."

Our third concern is that the HHS regulations provide no Federal support for resource and referral activities. However, legislation requires that the State agencies provide child care counseling to JOBS participants and referral assistance upon request. To provide these vital and necessary activities, expenditures for such activities should be reimbursed at the prevailing 50 percent administrative cost matching rate. To do otherwise severely hinders the statutory requirements it provide counseling and referral services.

Again referring to our March 1987 letter, we stated that "parents cannot make informed choice about child care unless they are provided with information about the options available to them." Many junior leagues, such as Dallas, TX and Akron, OH, have provided volunteers and startup funding for resource and referral programs across the country. Repeatedly, data from these programs report increased accessibility to and coordination of community child care services.

Our fourth concern is for transitional child care benefits. The preamble and proposed HHS regulations require that a "family must apply for transitional child care benefits in writing." The statute does not contain a reapplication provision for families immediately moving off of AFDC nor does it appear to be the intent of Congress to unnecessarily burden the States with additional paperwork for essential child care benefits to those families successfully moving from welfare to self sufficiency.

Our fifth concern is that the regulations appear to limit the health and safety protection of children in center-based care in those instances where a center may be exempt from State and local law. This is a direct contradiction to the statute which requires that all center-based care paid for under the act meet minimum health and safety standards established by the State. This issue has been a priority of junior leagues for many years. A substantial number of junior leagues, including cities such as St. Louis, MO and Oklahoma City, OK, have projects that advocate stricter State licensing and adequate standards for child care.

Two final points. Despite Mr. Rolston's statements suggesting the contrary, the HHS preamble as written, which appears to give States the authority to determine if informal care should be used. The statute is clear in the requirement child care arranged by the State should consider the individual needs of the child. In addition to the questionable policy of giving States the authority to require informal care, data exists which suggests the assumption about the availability of informal care are inaccurate.

Lastly, the HHS regulations establish an upper age limit of under age 13 beyond which reimbursement would not be permitted. In keeping with the goal of emphasizing State flexibility in implementing this Family Support Act, it would seem more appropriate to grant States the option to develop there own upper age limits for reimbursable child care. We are all too familiar with the potential risk to vulnerable older children.

Again, junior leagues have been responding to these concerns in community projects in adolescent pregnancy prevention, drug and alcohol abuse prevention and school dropout programs.

In conclusion, the association strongly urges the members of the subcommittee to move quickly to require the Department of Health and Human Services to revise the regulations as they pertain to child care. It is essential that the regulations be consistent with the statute and the intent of Congress.

Thank you, and we look forward to working with you on implementing the Family Support Act.

[The statement of Ann D. Miller follows:]

STATEMENT OF ANN D. MILLER, CHAIRMAN, PUBLIC POLICY COMMITTEE, ASSOCIATION OF JUNIOR LEAGUES, INC.

Good morning. My name is Ann Miller. I am the Chairman of the Public Policy Committee of the Association of Junior Leagues and am a member of the Junior League of Baton Rouge, Louisiana. In my community, I am the vice chairman of Volunteer, Baton Rouge!, a member of the Board of the Baton Rouge Area Foundation and the Board of Trustees of the Louisiana Arts and Science Center. I am also a member of the Board of Leadership Greater Baton Rouge.

I am pleased to have this opportunity to present to you the Association's views on the recently issued proposed regulations for the Family Support Act of 1988 as they pertain to the child care portions of the legislation.

The Association of Junior Leagues is an international organization of women committed to promoting voluntarism and improving the community through the effective action and leadership of trained volunteers. Today, there are 263 Leagues in the United States with approximately 170,000 members. The Association's commitment to the improvement of services for children and families is long-standing. Junior League volunteers have been providing such services since the first Junior League was founded in New York City in 1901. In the 1970s, the Association and individual Junior Leagues expanded their activities to advocate for legislative and administrative changes directed at improving the systems and institutions that provide services to children and their families. These advocacy activities have focused on such issues as child care, child health, child abuse and neglect and child welfare services.

THE ASSOCIATION'S INVOLVEMENT WITH CHILD CARE

The issue of child care has been a longstanding priority for the Association as well as individual Junior Leagues. In 1981, the Board of Directors of the Association adopted the following Child Care Concepts:

- o Child care should be easily accessible and affordable to all parents who want it.
- o A wide variety of child-care programs should be available to meet the needs and preferences of children and their families.
- o Certain minimum standards of licensing requirements should be in place to ensure the health, safety and well-being of children.
- o Strong information and referral systems should be established.

Subsequently, in 1987, the Association endorsed the Principles on Welfare Reform drafted by the Food Research Action Center (FRAC) which included the following specific references to child care in relation to welfare reform:

- o Persons who work should be rewarded for their efforts. They should receive income sufficient to support a family and access to necessary health care and child care. Barriers to the employment of low-income persons should be eliminated.
- o In achieving the objectives above, the federal government should maintain a strong presence, setting minimum benefit standards, providing adequate resources for effective programs and supporting appropriate and effective state and local initiatives.

Finally, the delegates to the Association's 67th Annual Conference held in Anaheim, California May 3-7, 1989, overwhelmingly approved the following resolution, recommitting the Association and its member Leagues to addressing the need for child care:

> WHEREAS, fewer than ten percent of our population lives in the traditional nuclear family; and
>
> WHEREAS, the Department of Labor estimates that by 1995 two-thirds of all preschool children will have mothers in the work force and four out of five school age children will have working mothers; and
>
> WHEREAS, Junior Leagues recognize that children are a precious resource; and
>
> WHEREAS, children need a quality environment where they can develop to their full physical, intellectual and emotional potential; and
>
> WHEREAS, child care does play a major role in child development; and
>
> WHEREAS, Junior Leagues are concerned with quality child care as it applies to alcohol and substance abuse, the new homeless, adolescent pregnancy, parenting, illiteracy and juvenile crime; be it
>
> RESOLVED, that the Association of Junior Leagues and individual Leagues recognize child care as an issue of child development and prevention; be it further
>
> RESOLVED, that individual Leagues explore what can be done at the local level to provide available, affordable and quality child care.

The Association has consistently advocated for a shared responsibility among the various levels of government as well as the public and private sector in addressing the need for child care. However, as we testified before the Senate Finance Committee on September 22, 1988, on the role of the federal government in ensuring child care, we stated: "Within this partnership the role of the federal government is, we believe, especially critical. The federal government is in the unique position both to provide essential leadership and to ensure the establishment of a stable infrastructure which ensures that child care throughout the country will be affordable, accessible and of good quality." Further, specifically in support of the goal of welfare reform in the same testimony, we stated: "The Association also supports provisions in welfare reform legislation, currently pending before Congress, which mandate that child care be provided to all parents in work, job training and education activities and provide for transitional child care services for families leaving welfare."

Thus, both because of a longstanding belief in the importance of accessible, affordable, quality child care for all parents who need it and, specifically, because of our strong support for the child care provisions included in the Family Support Act of 1988 (P.L. 100-485), we were dismayed to review the proposed regulations promulgated by the Department of Health and Human Services and published in the Federal Register on April 18, 1989. It is our view that the regulations as they pertain to the child care provisions of the Act do not reflect the intent of Congress in passing the legislation and fall far short of ensuring that families receiving welfare will have the supports and services that are essential if they are to achieve and maintain self-sufficiency.

PROPOSED HHS REGULATIONS PERTAINING TO CHILD CARE

The proposed regulations appear to undermine the intent of Congress in several ways. Specifically:

Child Care Guarantee

The preamble of the regulations state: "A state IV-A agency is not required to treat child care benefits under this part of the proposed regulations as an absolute entitlement and to provide all employed recipients and participants in JOBS with child care benefits." 54 Fed. Reg. 15666.

The Family Support Act Conference Report contradicts the limitation imposed by the proposed regulations. H.R. Rep. No. 998, 100th Congress, 2nd Session (1988). The Report states:

> The conference agreement provides that the State agency must guarantee child care to the extent that it is determined by the agency to be necessary for an individual's employment. The State agency must also guarantee child care for education and training activities (including participation in the JOBS program) if the State agency approves the activity and determines that the individual is satisfactorily participating in the activity. H.R. Rep. No. 998, p.160. The Family Support Act guarantees child care for each family that meets the statutory criteria. Furthermore, once a family meets the statutory criteria this guarantee is an entitlement.

Throughout the development and passage of the Family Support Act, the Association was a strong advocate for the guarantee of child care for families. The inability to find child care that is affordable, accessible and of good quality is cited repeatedly as a major barrier to women on welfare who would like to find a job. The Junior League of Des Moines Iowa, in 1983, initiated the Child Care Subsidy and Assistance project in collaboration with Polk County. In the first two years of operation, 60 of the 300 families served were women entitled to receive welfare who preferred to enter job training. The assurance of affordable child care subsidized through the Junior League project eliminated the barrier to self sufficiency that these women faced. We all have heard the tragic stories of death and injury to children whose mothers were forced to settle for inadequate, substandard care in order to go to work. In guaranteeing child care in the Act, it clearly was the intent of Congress to provide families with child care services that are developmentally sound for children and are sufficiently stable to ensure the long-term self-sufficiency of their mothers.

Federal Reimbursement for Child Care

The preamble states and it is further provided for in the proposed regulations that "[t]he local market rates be established at the 75th Percentile." 54 Fed. Reg. 15669; [Proposed] Sec. 255.4 (a)(2)(iii).

This limitation is not authorized by the statute and could have an adverse impact on the supply of child care for families in need. Sec. 402(g)(3)(b)(i) of the Act provides that states can receive federal reimbursement for child care as long as those "amounts do not exceed the applicable local market rate..." The Conference Report restates this provision.

> The conference agreement provides that Federal matching is available for expenditures for child care that are within limits established by the State ..., but not in excess of applicable local market rates (as determined by the State in accordance with regulations of the Secretary). H.R. Rep. No. 998, p. 162.

Prior to the enactment of the Family Support Act, advocates including the Association had been urging improvements in the AFDC child care disregard. On March 6, 1987, in testimony on welfare reform presented before this Subcommittee, the Association stated:

> As a result of the 1981 cuts in Title XX, many states are increasingly relying on the AFDC Title IV-A child care disregard which OBRA capped at $160 a month, an amount insufficient to pay for good child care. Before OBRA, a family receiving a child care subsidy from a government program could deduct all of its child care costs and reasonable work expenses, before the AFDC benefit level was determined. As a result of OBRA 1981, parents working full time can deduct actual child care expenses only up to $160 a month per child and other work expenses up to $75 per month. Furthermore, the disregard, unlike Title XX, does not require that the child care it funds meet relevant state or local licensing standards.

In addition, following this testimony the Association responded to Representative Donald Pease's request that we review proposed legislative language on child care in H.R. 1720. In a letter dated March 26, 1987, we stated:

> While we are pleased that Representative Ford's bill H.R. 1720, recognizes the higher cost of infant care by allowing a higher payment for this care, we believe the amounts of $175 per month for children over the age of two and $200 per month for infants under age two are insufficient to cover the cost of care. We would prefer to have the legislation require that the subsidy cover the market rate of care. We also believe that child care assistance should be provided until the parent(s) are no longer qualified for a subsidy under their state's child care program.

Federal Support for Resource and Referral Activities

The proposed regulations provide that "[N]o Federal matching is available for the recruitment and training of child care providers, resource development, or licensing activities." [Proposed] Sec. 255.4(f).

The statute requires that the state agency provide child care counseling to JOBS participants and referral assistance upon request. Sec. 482(c)(3). To provide these vital and necessary activities, expenditures for such activities should be reimbursed at the prevailing 50% administrative cost matching rate. To do otherwise severely hinders the statutory requirement to provide counseling and referral services.

In the above referenced March 26, 1987, letter, the Association stated its support for resource and referral activities.

> In addition, we are pleased that Dr. Phillips has suggested language requesting that participants in any work program must be guaranteed child care and that resource and referral agencies be used to provide information on child care services. Parents cannot make informed choices about child care unless they are provided with information about the options available to them.

Many Junior Leagues have provided volunteers and start-up funding for resource and referral programs across the country. Repeatedly, data from these programs report increased accessibility to and coordination of community child care services.

Transitional Child Care Benefits

The preamble and proposed regulations require that a "family must apply for transitional child care benefits in writing. There is not eligibility for benefits prior to the month of application." 54 Fed. Reg. 15671, [Proposed] Sec. 256.2 (b)(3).

There appears to be no authorization in the statute for this proposed regulation. The Family Support Act, as amplified in the Conference Report, guarantees a 12 month entitlement to transitional child care for a family that has "ceased to receive assistance as a result of increased hours of or increased income from employment, or as a result of the loss of earnings disregards." H.R. Rep. No. 998, p. 164, Section 402 (g) (1) (A)(ii).

The statute does not contain a reapplication provision for families immediately moving off of AFDC, nor does it appear to be the intent of Congress to unnecessarily burden the states with additional paperwork for these families. Most importantly, there is a serious potential for delay of essential child care benefits to those families successfully moving from welfare to self-sufficiency.

Health and Safety Provisions

The proposed regulations imply that it was not the intent of Congress "to limit child care only to care that is specifically regulated by current State or local law." 54 Fed. Reg. 15669, [Proposed] Sec. 255.5. By so doing, the proposed regulation appears to limit the health and safety protections for children in center-based care in those instances where a center may be exempt from state and local law.

The statute provides that Family Support Act funds are available to pay for child care that meets "applicable standards of state and local law." The Act further states that "the state must establish procedures to ensure that center-based child care will be subject to state and local requirements designed to ensure basic health and safety, including fire safety protections. Secs. 402(g)(3)(B)(ii) and 402(g)(4).

The proposed regulations, as currently written, do not require states to develop health and safety protections for all center-based care including those that may be exempt from state and local law. This is in direct contradiction to the statute which requires all center-based care paid for under the Act to meet minimal health and safety requirements established by the state.

Reliance on Informal Care Arrangements

The preamble states that "... the State IV-A agency should determine whether there are any other individuals in the home who are capable of providing the necessary care." 54 Fed. Reg. 15651. Further, the preamble states that "... (F)requently, child care is provided through informal arrangements at no cost. The child care guarantee does not mean that paid child care must be available for every participant. In determining whether child care is necessary, the State IV-A agency may take into account informal care." 54 Fed. Reg. 15666.

The statute is quite clear in the requirement that child care arranged for by the state should consider the individual needs of the child. Sec. 402(g)(1)(A)(ii). Further, the preamble states "Parents will continue to have supervision of their children as they would have in any working family, with options for choosing sources of child care....", and "[t]hat consistent with individual responsibility is choice, and that parents be given a wide range of options for child care while participating in the program." 54 Fed. Reg. 15640.

Thus, the preamble language giving the state the authority to determine if informal care should be used appears both to contradict the statute as well as basic premises regarding parental responsibility and choice enunciated in the preamble by the Department in drafting the regulations. To empower the state to require a family to use informal care clearly represents an inappropriate intrusion of the state into the affairs of any family and subverts the intent of Congress in developing the child care portions of the legislation. In addition to the questionable policy of giving the state the authority to require informal care, data exists which suggests that the assumptions about the availability of informal care are inaccurate. A recent Louis Harris and Associates poll, "Family Survey II: Child Care" (April 1989) commissioned by the Philip Morris Companies, Inc. found that a majority (69-30 percent) of persons surveyed disagreed with the statement that "with some initiative, most parents can find relatives or friends who can care for children while they are at work, making child-care facilities largely unnecessary." The same survey found that "the average parent uses between two and three support services during working hours. The multiple dependencies mean parents are scrambling much of the time to make arrangements." (Emphasis added).

Age Limitation for Federal Reimbursement

Though there is no specification in the statute, the regulations establish an upper age limit beyond which federal reimbursement for child care would not be permitted. "The State IV-A agency must guarantee child care for a dependent child under age 13, or who is physically or mentally incapable of caring for himself or herself,...." [Proposed] Sec. 255.2(a). In keeping with the goal of emphasizing state flexibility in implementing the Family Support Act, it would seem more appropriate to grant states' the option to establish their own upper age limit for reimbursable child care. This would permit states' the ability to evaluate the developmental advantages of a child care setting for an older child as well as to assess particular risk factors, e.g., adolescent pregnancy, drug and alcohol abuse, lack of available community after-school recreational programs, which could strongly suggest the value of providing child care for an older child.

The Association strongly urges the members of the Subcommittee to move quickly to require the Department to revise the regulations as they pertain to child care. It is essential that the regulations be consistent with the statute and the intent of Congress. It is widely acknowledged that the current AFDC program now serves disproportionate numbers of women and children and "that within this group the most dependent are never-married mothers who did not complete high school and who had their first child at a young age; and that programs designed to reduce overall dependency must necessarily address this group." 54 Fed. Reg. 15640. Therefore, it is both illogical and an example of bad policy to undermine the child care provisions in the statute as the current regulations do. Not only do the current regulations pertaining to child care seriously threaten the ability of JOBS program participants to acquire the skills necessary to move off of AFDC to self-sufficiency, the regulations would permit shortchanging the children in these families.

Thank you for the opportunity to appear before you today. We look forward to working with you to ensure meaningful implementation of the Family Support Act.

Ann D. Miller
Chairman, Public Policy
The Association of Junior Leagues, Inc.

Acting Chairman **Downey**. Thank you. I have one brief comment, and then I will have Mrs. Johnson inquire.

The statement about whether or not it is required, I think some of the statements in the regulation's preamble give cause for concern on this issue of child care. I think as one examines further the regulation itself, there is indeed the right initiative that in order for anyone to be required to participate or invited to participate, child care must be available. That is clear in my mind. I want to be sure it is clear in yours.

Ms. **Ebb**. I think there is some problem with the way it is phrased. The regulations properly echo in section 255.2 what we believe the statute require. It is also clear that you cannot require a mandatory participant to participate without providing necessary child care. The regulations do go in section 255.1 on to allow States to set priorities for how they will provide child care.

Given the language in the preamble, that prioritization process does raise some problems. We would like, however, to read the regulations as requiring precisely what the statute requires.

Acting Chairman **Downey**. Ms. Johnson.

Mrs. **Johnson**. Also in view of the hour, I am just going to make a couple brief comments. Thank you for your testimony. I want to be sure that the volunteers will have the same entitlement to day care as does anyone else who participates, and I appreciate your bringing that to our attention.

As to the education standards, I would be interested, Ms. Keeton, in your getting back to us as to what standard you think we could use. I understand the problem with tests, grade-level equivalencies and so on, and I certainly want to be sure that the standards are high enough. There is no sense in getting people out there if they are not literate, and we know we already have a problem with people in the work force who aren't literate. We are talking about sole providers for their families. We don't want them in the work force without both math and reading capability. I look forward to hearing from you.

[The following was subsequently received:]

Proposed Regulation Revision

Amend 250.1 Definitions

1. Basic literacy level - (new definition) means the attainment of the basic skills of reading comprehension, written communication, verbal communication, computation and problem solving which enable an adult to function effectively and independently in society as well as meet the goals of her employability plan.

2. Making good progress and Making satisfactory progress: (line 13) Such standard includes both a qualitative measure of a participant's progress, such as a grade point average and a quantitative measure, such as a reasonable time limit by which a student is expected to complete her studies.

(Add the following) --- If a criterion-referenced diagnostic assessment is used, making good progress relates to mastery of competencies recognized as deficient. Mastery is determined through benchmark assessment.

Amend 250.21 State plan content - section (6) (i)

Should now read: (i) The types of assessment tools selected (self-assessment survey, basic skill assessment, vocational aptitude assessment, etc.); and...

Amend 250.32 Participation requirements for education - section (b) (1)

Should now read: (1) The individual demonstrates the reading comprehension, written communication, verbal communication, computation and problem solving competencies equivalent to those of a high school graduate in the state; or

(2) The individual demonstrates reading comprehension, written communication, verbal communication, computation and problem solving competencies identified as appropriate for the long-term employment goal stated in her employability plan, and such long term employment goal does not require a high school diploma (or equivalent).

ADD: (c) To determine the skills appropriate for the long-term employment goals of a participant, as provided in (b) (2), the State IV-A agency shall utilize or develop analyses of skills to be used in the occupation.

Amend 250.41 Initial assessment and employability plan. - section (a)(2)

Should now read: (2) The State IV-A agency may conduct initial assessment through various methods such as interviews (ADD) basic academic assessment, vocational assessment, counseling and self-assessment instruments.

Amend 250.44 Mandatory components - section (a)

Should now read: (a) Any educational activity below the post-secondary level that the State IV-A agency determines to be appropriate to the participant's (ADD) long-term employability goal. Such activities may be combined with training that the State IV-A agency determines is needed in relation to the participant's employability plan. (ELIMINATE) The educational activities that must be made available include, but are not limited to: (1) High school education
(2) Basic and remedial education
(3) Education in English proficiency

Rationale: Using the term " below the post-secondary level" - implies all of these services which have been defined in section 250.1 Definitions; therefore, it is unnecessary in this section.

Amend 250.73 Matching rates - ADD new section (e) to provide:

(e) Federal participation is available for case management and JOBS component services to a JOBS participant in the one year period immediately following termination from AFDC. Such services shall be matched at the rate that would be applicable if the individual continued to receive AFDC during that time.

Rationale: See attached sheet

Amend 250.82 Required case record data - section (b) (7) and (8):

Should now read: (b) (7) Last grade completed
(b) (8) Level of reading and math, based on either standardized norm-referenced or criterion-referenced measures.

Proposal: Amend 250.73 to provide:

(e) Federal participation is available for case management and JOBS component services to a JOBS participant in the six month period immediately following termination from AFDC. Such services shall be matched at the rate that would be applicable if the individual continued to receive AFDC during that time.

Explanation: The FSA does not directly address the issue of continued JOBS services after a family loses AFDC eligibility. Proposed regulations are also silent on this issue. States need flexibility to respond to several situations:

1) A former recipient may have the greatest need for the assistance of a case manager in the initial months of employment. This is most likely to be the time when difficulties about scheduling, child care, and transportation arise. It makes little sense to make a substantial investment in a training program, and then be unable to provide case management in the first critical months of employment. States should have the option to do so.

2) Some recipients will lose AFDC eligibility, either because of employment, or, for example, because of increased child support, during the middle of a JOBS component. The state should not be forced to terminate a nearly completed component at the moment AFDC eligibility ends. For example, suppose the recipient is in Month 4 of a 6 month course. If it is more appropriate for the recipient to finish the course, the state should have the flexibility to continue funding.

3) States also need sufficient flexibility to ensure continued funding of case management and components during temporary disruptions of AFDC eligibility. For example, suppose the recipient's case is terminated because of failure to submit a monthly report form. The problem may be resolved within the month. The education or training component should not be forced to be disrupted while the problem that led to termination is being resolved.

4) Finally, states should not be forced to choose between structuring JOBS employability plans that focus on education, and plans that seek immediate employment placements. Without the proposed regulation, a state has no way to offer educational opportunities to an individual after she loses AFDC eligibility. If the proposed regulation were adopted, the state offer individuals assurance that accepting available employment would not mean preclusion of educational opportunities under the program.

Mrs. **Johnson**. As to the issue of displacement, I differ with you, and I want to put that clearly on the record. Our goal was to prevent displacement of people working, but not to prevent certain jobs from going to welfare recipients in a training capacity. If you look at this whole issue from the point of view of taxpayer equity, if taxpayers are going to expend more on welfare reform to create job training and job opportunities, you certainly can't require that they also fund every new entry-level public employment job that comes up. There has to be some offset here where it is possible. I have a lot of objection to hiring welfare trainees to displace public employees, but not to fill new jobs. I want to make clear that I think the language said displacement and didn't say displacement in new positions.

Lastly, on this same point, I think a statement needs to be made in regard to the 75 percent child care cap. One of the equity issues this bill creates in our society is a different set of support services for poor working people who were on welfare versus poor working people who never were on welfare, and I think I can live with that. We made that decision when we passed the law. I think it is reasonable for us to say that people on this transition program or on the support program, but particularly the transition program, can't buy the level of care that is above the level that 75 percent of the people in the world out there are buying. I think it is our obligation to make that clear, from the point of view of taxpayer equity and service equity.

You are all complaining you don't have enough money to implement this law. I think it is our obligation to say you can't provide Cadillac care. I am not saying that price and Cadillac necessarily go together in the child care market, not for a moment, but it is reasonable for us to set cost guidelines, just like it is terribly important for us to set educational standards.

But in terms of access to day care, in terms of education achievement, any guidance you can give us on that we will look forward to.

Acting Chairman **Downey**. I also want to thank the members of the panel. I am pleased Mr. Rolston sat and listened intensively even while I was in phone conversations. This will be part of an ongoing process. We are interested in hearing from you about this educational standard and other moving targets.

The subcommittee is adjourned.

[Whereupon, at 12:20 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

AMERICAN FEDERATION
OF LABOR AND CONGRESS
OF INDUSTRIAL ORGANIZATIONS

UNION YES

Executive Council Members

Lane Kirkland
President
Thomas R. Donahue
Secretary-Treasurer
Frederick O'Neal
Albert Shanker
Edward T. Hanley
Angelo Fosco
Kenneth T. Blaylock
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John A. Gannon
Sigurd Lucassen
William J. McCarthy

June 1, 1989

Robert J. Leonard, Chief Counsel
Committee on Ways and Means
1102 Longworth
House of Representatives
Washington, DC 20515

Dear Mr. Leonard:

In connection with proposed HHS-FSA rules to implement the Job Opportunities and Basic Skills Training (JOBS) Program of Title II of the Family Support Act of 1988, (Federal Register, April 18, 1989) I wish to present the following comments and materials on behalf of the AFL-CIO. These comments focus on (1) child care, (2) labor participation, (3) anti-displacement protection, (4) grievance procedure for displacement complaints, and (5) contracting-out issues.

CHILD CARE

The lack of safe, adequate, effective child care is a major barrier to parents who want to leave the welfare rolls and get training and jobs. Unfortunately, the HHS-FSA rules undermine the guarantee in the Family Support Act that adequate child care be provided so that parents can get training and jobs. AFDC is primarily for protection of children. The proposed rules jeopardize the rights of children of JOBS participants to decent care and the rules limit the state's ability to provide such care.

To protect children by assuring adequate child care for children of JOBS participants, the AFL-CIO recommends:

(1) Eliminate preamble language (Fed.Reg.p.15666) which says the FSA law's guarantee of child care, the child care entitlement, may be limited by state appropriation ceilings, available support, and target group priorities.

Eliminate language (p.15666) which says a state IV-A agency is not required to treat child care benefits as an absolute entitlement.

Eliminate the limitation on the child care guarantee to children under age 13 (Sec.252.2-a). The law contains no such restriction.

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Eliminate the language in Section 255.2 which suggests that there is ample free, informal, no-cost child care available and urges states to encourage casual, informal, unpaid child care. This language distorts reality and is contrary to the intent of the law.

(2) Eliminate language (Sec.255.4-a-2-iii) which says local child care rates must be based on the 75th percentile cost of child care in the local area. This is in conflict with the law which provides federal matching funds for 100 percent of the local child care rate and will seriously limit the states' ability to make child care available.

Eliminate the statement (Sec.255.4-2-f) that no federal matching is available for recruitment or training of child care providers or licensing activities.This is contrary to the intent of the law and will impede the efforts of states to initiate effective child care programs.

A key provision of the law to help welfare recipients move from welfare to work is the requirement that child care will be available for 12 months after the JOBS participant leaves the welfare rolls. This should be automatic without any intervening waiting period. Section 256.2-b-3 wrongly requires that such transitional child care is available only on application in writing after a person stops getting AFDC. This requirement is contrary to the intent of the law and discourages a smooth transition from welfare to work and should be eliminated.

LABOR PARTICIPATION

There is ample evidence from JTPA that job training and job placement programs are more effective and more successful when organized labor and employers are involved in the whole range of program activities. We believe, therefore, that opportunities for organized labor to be consulted about state JOBS plans and programs and changes in plans should be written into the HHS-FSA JOBS regulations. (Sec.250.20).

To assure regular input from organized labor, employers, community-based organizations, education agencies and other parties, we recommend that states be required to set up an on-going JOBS advisory council (with required representation of organized labor, employers, and other groups) to advise, oversee, and recommend action or changes in the state JOBS program. (Sec.250.20).

In addition to consultation and coordination with the state agency responsible for JTPA, consultation and coordination with the State Job Training Coordinating Council and with local Private Industry Councils should be required by the JOBS regulations. (Sec.250.12).

Labor organizations representing workers in occupations identified for JOBS training can be a valuable resource in design of curriculum and placement of participants. Section 250.21-f should require consultation with organized labor along with coordination with public and private agencies.

Section 250.21-n should contain more precise language to assure that occupations selected for training are in demand (rather than likely to become available). The state should be required to demonstrate that these occupations will lead to long-term employability and are not low-wage, low-skill, high-turnover jobs. Specific information on projected wage rates and increased earnings should be required in this paragraph (n).

To eliminate windfall profits for employers reimbursed for extra costs of training disadvantaged workers, we recommend that the maximum reimbursement be limited to 50 percent (rather than to an average of 50 percent) of the wages paid to a JOBS participant during the period of training. (Section 250.61).

Furthermore, to prevent revolving-door hiring and firing, the regulations should require that employers agree to hire the participant at the end of the training period and keep the trainee on the payroll for at least six months. If employers violate this agreement, they should be denied access to the program.

A comprehensive complaint procedure should be available not only at the local and state level but also to the federal level to resolve complaints of violations of JOBS law and regulations.

ANTI-DISPLACEMENT PROTECTION

Section 251.3 seriously weakens the anti-displacement requirement in Section 484 of the Family Support Act. The law contains strong and carefully worded language to protect regular paid employment and to prevent displacement by work program participants.

Exhibit 1 attached to this letter explains the differences between the law and the regulations and the AFL-CIO recommendations which parallel the recommendations of the American Federation of State, County, and Municipal Employees:

Apply Section 251.3-a to both currently employed workers and positions, not just those who are not subsidized by JOBS;

Correct Section 251.3-c to provide that assignments shall not result in employment or assignment of a participant or filling a position when any other individual is on layoff from the same or equivalent position from an employer, not just within the same organizational unit;

Correct Section 251.3-c to provide that assignments shall not result in employment or filling a position when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect (as opposed to intention) of filling the vacancy so created with a participant subsidized under the program; and

Correct Section 251.3-e to reflect congressional intent that the prohibition against using participants to fill established, unfilled position vacancies was to apply to CWEP, work supplementation, and work experience.

GRIEVANCE PROCEDURE
FOR DISPLACEMENT COMPLAINTS

The Family Support Act requires that states establish and maintain a grievance procedure for resolving displacement complaints but Section 251.4 provides no regulations on state grievance procedure. Exhibit 2 lays this issue out in more detail.

We urge that the regulations set minimum standards for state grievance procedures, with investigations by the Secretary of Labor if necessary, time-frames for making decisions, and appropriate remedies for displacement violations. JTPA regulations (Subpart D, Sections 629.51-54) can provide useful guidance.

CONTRACTING-OUT ISSUES

We are concerned about Section 250.13 provisions on contracting authority and about Section 250.73 provisions on matching rates and preamble language relating to the substance of these sections. The regulations should avoid creating incentives which would favor independent contractors over public agencies in providing JOBS-related services. We are pleased to see that HHS-FSA addressed this issue explicitly in the regulations. However, some problems remain.

The AFL-CIO supports the principle that public work which has traditionally been performed by public employees should continue to be performed by public employees, and that public work which has traditionally been performed by private employees should continue to be performed by private employees.

AFL-CIO affiliates represent public employees who administer AFDC and provide services under WIN and AFL-CIO affiliates have a long history of running training programs for disadvantaged workers. We want to make sure that JOBS participants get the best services possible, that existing public agencies are used to provide services where they are best suited to provide such services, and that administrative and AFDC discretionary functions should not be contracted out.

The regulations state that costs of full-time JOBS staff will be reimbursed at the higher (60 percent or more) match rate while costs of part-time JOBS staff will be reimbursed at the lower 50 percent rate. We urge elimination of this distinction to prevent discrimination in matching based on administrative procedures.

I am attaching to this letter Exhibit 3 which spells out some additional AFL-CIO concerns about the FSA-JOBS regulations. Thank you for your attention to all these comments.

The Public Employee Department of the AFL-CIO concurs with the recommendations of this letter to you from the AFL-CIO. We urge your favorable action on these recommendations.

Sincerely,

Markley Roberts

Markley Roberts, Head
Office of Employment & Training

MR:ptn
opeiu #2 afl-cio

Enclosures

EXHIBIT 1

COMPARISON OF DISPLACEMENT LANGUAGE IN STATUTE TO LANGUAGE IN PROPOSED REGULATIONS

FAMILY SUPPORT ACT
SECTION 484

No work assignment under the program shall result in:

(1) the displacement of any currently employed worker or position (including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits), or result in the impairment of existing contracts for services or collective bargaining agreements;

(2) the employment or assignment of a participant or the filling of a position when (A) any other individual is on layoff from the same or any equivalent position, or (B) the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created with a participant subsidized under the program; or

(3) any infringement of the promotional opportunities of any currently employed individual.

The provisions of this section apply to any work-related programs and activities under this part, and under any other work-related programs and activities authorized (in connection with the AFDC program) under section 1115.

PROPOSED REGULATIONS
SECTION 251.3

The State agency shall assure that CWEP, other work experience, on-the-job training [OJT], and Work Supplementation assignments:

(a) Shall not result in the displacement of currently employed workers, including partial displacement, such as a reduction in hours of nonovertime work, wages, or employment benefits;

(b) Shall not impair existing contracts for services or collective bargaining agreements;

(c) Shall not result in the employment or assignment of a participant or the filling of a position when any other person not supported under this program is on layoff from the same or a substantially equivalent job within the same organizational unit, or when an employer has terminated any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under this program.

(d) Shall not infringe in any way upon promotional opportunities of persons currently in jobs not funded under this program; and

(e) Shall not result in the filling of any established unfilled position vacancy by a participant assigned under section 482(e) [work supplementation program] and section 462(f) [CWEP] of the Social Security Act, as amended.

Explanation of Differences Between Statue and Regulation

The regulations differ from the statute in the following ways:

The statute provides that assignments shall not result in the displacement of any currently employed worker or position. The comparable regulation only prohibits displacement of currently employed workers. (See 251.3(a)).

The statute provides that assignments shall not result in the employment or assignment of a participant or filling a position when any other individual is on layoff from the same or equivalent position. The regulation limits this prohibition to cases when any other person not supported under JOBS is on layoff from the same or a substantially equivalent job within the same organizational unit. (See 251.3(c)).

The statute provides that assignments shall not result in employment or assignment of a participant or filling a position when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created with a participant subsidized under the program. The regulation limits this prohibition to cases where an employer has terminated any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under this program. (See 251.3(c)).

The statute prohibits any assignment from resulting in infringement of promotion opportunities of currently employed individuals. The regulation prohibits infringing in any way on promotional opportunities of persons currently in jobs not funded under JOBS. (See 251.3(d))

AFL-CIO Recommendations

Final regulations need to be corrected to ensure that the regulatory protections reflect the full statutory protections. Specifically, Section 251(a) should apply to both currently employed workers and positions. The displacement protections should apply to all workers, not just those who are not subsidized by JOBS. Section 251(c) should be corrected to provide that assignments shall not result in employment or assignment of a participant or filling a position when any other individual is on layoff from the same or equivalent position with an employer, not just within the same organizational unit.

Section 251(c) should also be corrected to provide that assignments shall not result in employment or assignment of a participant or filling a position when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect (as opposed to intention) of filling the vacancy so created with a participant subsidized under the program. This change is crucial to preventing displacement. Congress clearly intended to include this languages since the Conference Report expressly states: The phrase in the House bill "with the intention of" is replaced by "with the effect of."[1]

Finally, the Conference Report indicates congressional intent that the prohibition against using participants to fill established, unfilled position vacancies was to apply to CWEP, work supplementation, and work experience.[2] *Section 251.3(e), limiting* applicability to CWEP and work supplementation, tracks the statutory language, but HHS should correct the regulation to be consistent with legislative intent.

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[1] H.R. Rep. No. 100-998, 100th Congress, 2nd Session 136(1988).

[2] Id, at 135.

EXHIBIT 2

GRIEVANCE PROCEDURE FOR DISPLACEMENT COMPLAINTS

Under the Family Support Act, states must establish and maintain (pursuant to regulations of HHS and the Department of Labor) a grievance procedure for hearing and resolving complaints by regular employees or their representatives that an assignment violates the anti-displacement provisions. The decision of the State can be appealed to the Secretary of Labor for investigation and such action as the Secretary may find necessary.[1]

Proposed Regulations

The regulation requires states to establish and maintain a grievance procedure, but does not specify any details of the content and nature of the procedure. [2]

The regulation establishes the following procedures for appealing the decision:

The state's decision may be appealed to the Office of Administrative Law Judges, Department of Labor. The review will be on the record of the state proceedings, and will be limited to questions of law. The state's findings of fact shall be conclusive if supported by substantial evidence. [3]

Copies of the appeal must also be sent to the Department of Labor's Assistant Secretary for Employment and Training, and HHS' Assistant Secretary for Family Support. The appeal must include the provisions of the FSA or regulation believed to have been violated, a copy of the original complaint filed with the state, and a copy of the state's findings and decision.[4]

On receipt of the appeal, the Office of Administrative Law Judges will request the administrative record from the state; the state must certify and file it within 30 days, with copies to the Department of Labor's Assistant Secretary for Employment and Training, and HHS' Assistant Secretary for Family Support.[5]

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[1] Section 201(b), creating Section 482(d)(1).

[2] Section 251.4(a).

[3] Section 251.4(b).

[4] Section 251.4(d).

[5] Section 251.4(e).

On receipt of the copy of the appeal and record, the Assistant Secretary of Employment and Training will review the record, and may choose to file an amicus curiae brief or report. The state agency and Assistant Secretary may also file a report.[6]

The decision of the Office of Administrative Law Judges will be the final decision of the Secretary of Labor on the appeal.[7]

AFL-CIO Recommendations

The proposed regulation is deficient in the following ways.

First, it fails to set minimum standards for state grievance procedures. It seems wholly inappropriate for regulations to provide that review will be on the record of the state proceedings, without describing minimum due process safeguards for those proceedings.

Second, the statute provides for appeal to the Department of Labor for investigation and such other action as the Secretary of Labor finds necessary. But the regulation says there will be no investigation, and that the decision will be based on the record of the state proceedings. Congress envisioned a more active role for the Department of Labor.

Third, the regulation sets no time frames for making decisions, and does not describe what relief can be provided on a finding that the law has been violated.

Final regulations should, at a minimum, set specific time-frames and remedies. Such regulatory standards are necessary to ensure that the displacement protections in the Family Support Act can be enforced. We recommend the following:

Time Frames

1) After a complaint is filed against the employer of the individual on work assignment, the regulations must require that a hearing be held between the two parties within 30 days of filing. The hearing should be held before the state agency responsible for administering the JOBS program.

2) The regulations must require that a written decision on the grievance be made by the state agency within 60 days from the date of filing.

3) If a complainant does not receive a written decision within 60 days of filing, or receives a decision which is unsatisfactory to the complainant, then the complainant must have the right to appeal the decision to the Governor. The complainant should be given reasonable time (30 days)

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[6] Section 251.4(f).

[7] Section 251.4(g).

to file the appeal after the agency decision is made or after the 60 day limit expires.

4) The Governor must have an independent panel review the appeal and a decision must be made within 30 days.

5) If the panel has not made a decision within 30 days, or if the decision is unsatisfactory to the complainant, then a complaint can be filed with the U.S. Secretary of Labor.

In order to reduce the number of grievances that may be filed, it is important that labor and management communicate and cooperate to the extent possible on the nature and structure of particular work assignments. We strongly suggest that to facilitate cooperation and reduce grievances, the regulations require that where a collective bargaining agreement exists, the employer consult with the union on the design and content of any work assignment activities with respect to training, supervision, job descriptions, wage rates and occupations planned before such work assignments are made. Prior notification to the union about planned work assignments (with sufficient lead time - 30 days) will reduce unnecessary problems.

Remedies

If it is determined that an employer has violated the displacement provision in the Family Support Act through the use of work program participants, then the following remedies shall be instituted:

1) The employer shall fully replace any and all workers or positions displaced by work program participants, and

2) The employer shall immediately and for at least one (1) year following the finding of displacement cease and desist its use of work program participants in any and all capacities, and

3) The agency responsible for administering the work program shall be prohibited from assigning work program participants to any employer found to have violated the displacement provision for at least one (1) year following the finding of displacement.

EXHIBIT 3

SUPPLEMENTARY COMMENTS BY THE AFL-CIO ON PROPOSED REGULATIONS (FEDERAL REGISTER, APRIL 18, 1989) FOR THE JOB OPPORTUNITIES AND BASIC SKILLS PROGRAM UNDER THE FAMILY SUPPORT ACT

MAY 1989

1) **Performance Standards** (Preamble - p. 15640)

AFDC recipients have been enrolled in employment and training programs under JTPA and other institutions for many years. Performance outcomes, particularly those related to wage at placement and job retention, can be adapted from these programs for interim use by JOBS administrators. Given the JTPA experience with cost measures we recommend that HHS refrain from including any cost measures in the development of its final performance standards.

2) **Basic Literacy Level** (Preamble - p. 15642)

High wage jobs require educational levels at and beyond high school. To be consistent with long-term employability goals of the JOBS legislation, the literacy level of eighth grade should be eliminated and replaced with a level which will assure a worker access to the primary job market. States should not be encouraged to place workers in lower level jobs which do not require English proficiency.

3) **Emphasis on Short-Term Training** (Preamble - p. 15656)

JTPA has been rightfully criticized for short-term, low-cost, low-wage placements. This emphasis on short-term training is disturbing in the JOBS regulations. We urge HHS-FSA to refocus its regulations on quality training leading to long-term employability for participants.

4) **Participation** (Section 250.1)

The requirement that OJT and work supplementation placements must be full-time in order to count towards participation is an unreasonable standard which would encourage states to rely more heavily on CWEP and job search as their JOBS program components. Also it would prevent placement in OJT of mothers of children under six who are required to participate only part-time. The use of hours as the single most important measure for assessing participation will surely drive the system to seek to "fill time" for participants rather than focus on a more beneficial mix of services

which will enhance their job prospects. An overreliance on job search and CWEP activities to fill time may aid program administrators, but will do little for clients. All successful employment and training programs have a customized service mix including assessment, which is flexible based upon the participants skills and needs. We recommend that hourly participation rates not be used as the primary determinant of participation, but rather that acceptable participation be the result of an individualized employability development plan agreed to by the administrative agency and the client. The hourly participation rates are also used to undermine the requirement in the Family Support Act that volunteers be given priority of service. So, if an exempt member of target group (perhaps a single mother high school drop-out with a two year-old) volunteers for a program that operates 15 hours a week, the state could choose not to include her in the program because she won't help them meet their participation quota. The preamble in the final regulation should make clear the state's duty to serve volunteers within target groups first and to provide them with supportive services, as necessary for participation.

5) **Coordination and Consultation** (Section 250.12)

The substance of Sections 141 and 143 of the Job Training Partnership Act should be included in this section. Organized labor involvement in the design and development of JTPA programs brings higher quality training and higher wage job placements for participants. JPTA requirements that organized labor be consulted in the design of training and concur in specific workplace training activities helps assure that programs train for occupations that are in demand. In the regulations the Department indicates that it is interested in addressing the quality training issue. Organized labor participation as it is outlined in current JPTA law and regulations could, if implemented properly, provide an excellent basis for the development of successful JOBS training programs.

6) **Contracting Authority** (Section 250.13)

Adding "cost effectiveness" to the listing of factors to be used in selecting service providers could be misinterpreted by program administrators who would then select the cheapest, but not necessarily the best program deliverer. Under JTPA the Department of Labor has developed a standard which asks administrators to assess the "reasonableness" of costs in light of the program objectives. In addition to a "reasonableness" standard we would recommend HHS-FSA encourage the selection of deliverers based upon the quality of jobs developed, wages at placement and job retention guarantees.

7) **State JOBS Plan** (Section 250.20)

In order to assure maximum public review and comment we recommend that consistent with JTPA regulations appropriate labor organizations be given the opportunity to review and comment on the state plan. Training services provided under JOBS are almost identical to those provided under JTPA. Labor organizations representing workers in occupations identified for training under the JOBS plan can be a valuable resource for program administrators in the design of curriculum as well as the placement of participants.

8) **State Plan Content** (Section 250.21)

Subpart (d) should require information on the number of participants to be served in each component as well as detailed demographic and education data to assure that those most in need are targeted for service.

Subpart (f) should require consultation with organized labor along with a description of the nature of coordination with public and private agencies. This section should contained detailed information on the nature and frequency of the contact with such organizations, the primary contact person as well as a description of the monitoring and oversight activities which the state will undertake to assure program performance and compliance with law and regulations.

Subpart (g) should contain specific descriptions of the contracting procedures and the methods for payment and performance as well as the procedures for monitoring local implementation of programs, whether they are subcontracted or directly administered.

9) **Initial Assessment and Employability Plan** (Section 250.41)

The proposed regulation does not allow states to count time spent in assessing participants' skills and developing an individualized employability plan as meeting participation requirements. The effect of this will be to encourage the states to spend less than the appropriate amount of time on the most vital phase of the program. Assessment is a critical component in the development of training programs and these regulations should contain minimum standards on this tool. It is the first step in the development of a systematic and long-range plan to permanently reduce welfare dependency. Assessment tools should be geared to long-term training and higher level skills. Participants should not be denied the benefits of a comprehensive assessment and training plan in order to place them in a quick-fix CWEP or low-wage job placement.

10) **Mandatory Components** (Section 250.44)

A combination of job skills training and on-the-job training is an excellent method for assuring labor-market success. JOBS regulations should offer maximum flexibility for program administrators to combine these components. This may require changes in hourly participation requirements as noted previously.

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Arkansas Advocates for Children and Families

May 22, 1989

The Honorable Thomas J. Downey, Acting Chair
Subcommittee on Human Resources
Committee on Ways and Means
1102 Longworth House Office Building
Washington. D. C. 20515

Dear Mr. Downey:

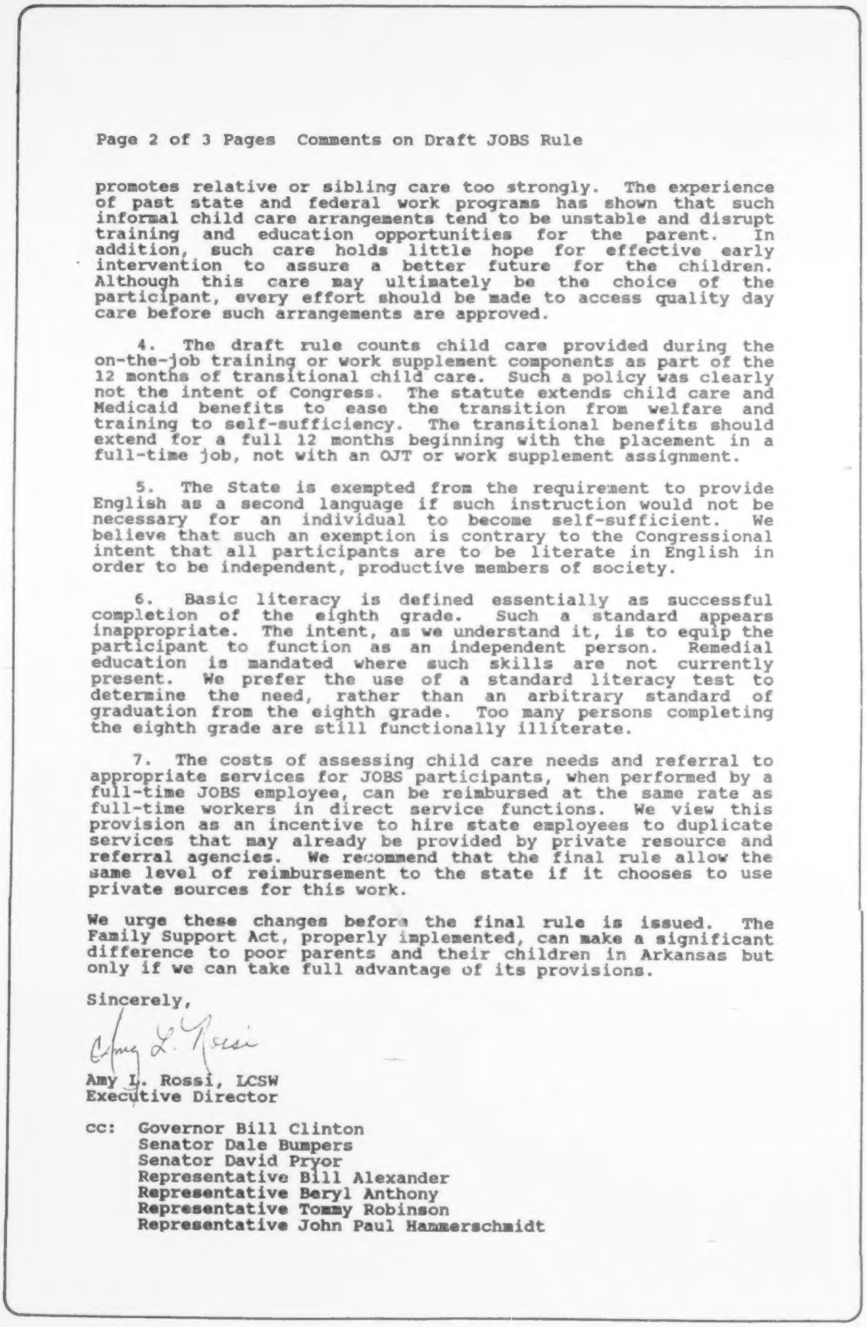
We are pleased that you are planning oversight hearings on the Family Support Act of 1988, focussing on the draft regulations issued by the Department of Health and Human Services. Since we cannot attend, we are submitting our comments for the record.

1. The language in the preamble undercuts the clear mandate of the Family Support Act that volunteers within the target groups must be given priority. Congress did not intend that a state could deny access to the volunteers while mandating other target group members participate. Both the preamble and the Final Rule should make this policy clear.

2. States receive no credit towards the participation quotas for persons in the assessment activity and the employability plan development. This provision may lead a state to make these activities as brief and inexpensive as possible rather than truly use them as tools to determine appropriate program components for the individual. The proposed rule also fails to recognize the inevitable gaps between components and while a participant awaits the beginning of an appropriate component, thus increasing the likelihood of requiring activity for its own sake. We recommend that the final rule define program participation to include assessment and employability plan development and that satisfactory participation in accordance with an employability plan include reasonable time periods between activities.

3. The Family Support Act provides a real opportunity not only for welfare clients but also for their children through the provision of quality child care services which can serve as early intervention programs. The proposed rule, however,

931 DONAGHEY BLDG., SEVENTH AND MAIN, LITTLE ROCK, ARKANSAS 72201 371-9678



promotes relative or sibling care too strongly. The experience of past state and federal work programs has shown that such informal child care arrangements tend to be unstable and disrupt training and education opportunities for the parent. In addition, such care holds little hope for effective early intervention to assure a better future for the children. Although this care may ultimately be the choice of the participant, every effort should be made to access quality day care before such arrangements are approved.

4. The draft rule counts child care provided during the on-the-job training or work supplement components as part of the 12 months of transitional child care. Such a policy was clearly not the intent of Congress. The statute extends child care and Medicaid benefits to ease the transition from welfare and training to self-sufficiency. The transitional benefits should extend for a full 12 months beginning with the placement in a full-time job, not with an OJT or work supplement assignment.

5. The State is exempted from the requirement to provide English as a second language if such instruction would not be necessary for an individual to become self-sufficient. We believe that such an exemption is contrary to the Congressional intent that all participants are to be literate in English in order to be independent, productive members of society.

6. Basic literacy is defined essentially as successful completion of the eighth grade. Such a standard appears inappropriate. The intent, as we understand it, is to equip the participant to function as an independent person. Remedial education is mandated where such skills are not currently present. We prefer the use of a standard literacy test to determine the need, rather than an arbitrary standard of graduation from the eighth grade. Too many persons completing the eighth grade are still functionally illiterate.

7. The costs of assessing child care needs and referral to appropriate services for JOBS participants, when performed by a full-time JOBS employee, can be reimbursed at the same rate as full-time workers in direct service functions. We view this provision as an incentive to hire state employees to duplicate services that may already be provided by private resource and referral agencies. We recommend that the final rule allow the same level of reimbursement to the state if it chooses to use private sources for this work.

We urge these changes before the final rule is issued. The Family Support Act, properly implemented, can make a significant difference to poor parents and their children in Arkansas but only if we can take full advantage of its provisions.

Sincerely,

Amy L. Rossi

Amy L. Rossi, LCSW
Executive Director

cc: Governor Bill Clinton
Senator Dale Bumpers
Senator David Pryor
Representative Bill Alexander
Representative Beryl Anthony
Representative Tommy Robinson
Representative John Paul Hammerschmidt

STATEMENT OF DENNIS J. BOYLE, DEPUTY DIRECTOR, STATE OF CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

Overall the Federal regulations have chosen to over-regulate, to require data that is unmanageable and unattainable, and to penalize States for working with the very population--the hard to serve--which Congress intended States to serve. Although a press release was issued with these proposed rules that indicated the intent of the Health and Human Services Department to provide for State flexibility, these regulations certainly remove that flexibility in key areas. We believe that it will be impossible for States to qualify for enhanced funding once the sanctioning provisions are in place. What will not be counted toward meeting the participation standards is particularly disturbing, the tracking provisions for serving the targeted populations are not doable, and requirements on program provisions result in unnecessary and duplicative paperwork. This is not a black and white picture; there are a number of areas where State options are supported. However, this testimony is focused on some very serious areas of concern as delineated below.

250.1(1) PARTICIPATION CRITERIA

We believe that the participation criteria in the Proposed Rule are counter to the intent of Congress in that they are excessively stringent and complex and intrude into the States' proper sphere of program discretion. The Proposed Rule goes far beyond the Statute in its very detailed prescriptions. Although the Family Support Act (FSA) did not define participation, the Conference Committee Report provides valuable insight into the Congressional intent with this statement: "Participation must be something more than simple registration for the JOBS Program: it must meet State-established requirements which are consistent with the regulations of the Secretary." As we see it, the Proposed Rule leaves the State with little meaningful discretion in establishing requirements for JOBS participation which appears to be far afield from Congressional intent.

The overregulation implicit in the Proposed Rule is evidenced by the requirement to consider "good and acceptable progress" in determining whether attendance in an educational component may be counted in the participation rate requirements contained in Section 250.74. This provision acts as a disincentive to serve the most disadvantaged persons because even if these individuals meet all the attendance requirements and are fully cooperative, they may be progressing at a slower rate than the established standard for "good and acceptable progress" during a given month and would not count as meeting the participation rate requirements. The result will be to encourage "creaming" and to penalize those States trying to serve their most disadvantaged recipients. We believe that this is contrary to Congressional intent which is to encourage, not discourage, providing services to the most disadvantaged who have the greatest need.

Another example of excessive regulation is the hours-of-participation provision contained in the Proposed Rule. In order to count as meeting participation rate requirements, the following criteria must be met: an activity level of at least full time for OJT and Work Supplementation and at least 20 hours per week in other specified activities must be maintained. No discretion is granted to the States in this regard. These requirements go well beyond the Statute. In fact, for single parents with children under six, the Statute mandates a maximum of 20 hours of required participation. Can 20 hours be simultaneously a minimum and a maximum requirement? Another example is the instance of Unemployed (U) Parents who are mandated by the Statute to meet a 16 hour per week work requirement. The Proposed Rule states that a U Parent who met the 16 hour requirement but not the 20 hour requirement would not be considered a participant for purposes of establishing the participation rate. Thus, for UP cases, a two-tiered tracking requirement would be necessary in order to establish whether or not the individual were meeting one or both requirements. We fail to grasp this convoluted logic. In our judgment, these two examples exemplify a tendency to pile requirement upon requirement with little or no consideration for the resulting administrative complexity. Ultimately, this defeats the intent of the Law.

The Proposed Rule excludes Orientation and Appraisal from those components which would count towards establishing participation in JOBS on the basis that these are primarily "agency activities" rather than "client activities." We disagree since in our judgment and experience, these two mandatory components represent substantial client as well as agency activity and should therefore be counted towards participation. Exclusion of these components is not supported in the Statute and does not appear to be consistent with Congressional intent.

RECOMMENDATION

Participation standards should be simplified and the States granted reasonable discretion in establishing specific attendance requirements related to specific components as Congress intended. The Federal regulations should not preempt State authority by mandating mandating unreasonably high minimum hours per week attendance requirements in order to meet participation rates. It is our experience that participation levels can effectively be tracked only on a point-in-time basis. Therefore, determination of participation should be based on whether the individual's attendance in a given component is confirmed on a given day ach month without reference to "good and satisfactory progress" which should be handled separately as an administrative requirement. Finally, Orientation and Appraisal should be counted towards JOBS participation since they represent substantial client activity.

250.80-250.81 **TRACKING AND REPORTING REQUIREMENTS**

The reporting requirements as drafted are unmanageable in terms of amount and frequency. The sample size requirement is out of proportion to any possible benefit. For example, California submits 1200 AFDC cases every six months for its required Federal AFDC quality control sample. In stark contrast, the Proposed Rule would require a sample of JOBS cases of 9500 cases per month, which is 5000 percent larger. Clearly, this is unmanageable. These requirements are so burdensome that the regulations acknowledge that it may be easier for some States to submit data on their entire JOBS caseload every month.

There is no acknowledgment that producing these reports would require years of very expensive systems development without which (especially in a State-County administered system) the data collection and submission is impossible.

RECOMMENDATION

Reporting requirements should be completely revamped. It would take years to produce the kind of data being requested and even then, we would question the approach of sending monthly case-specific data to HHS. This could lead to an unnecessary intrusion into the proper State sphere of responsibility and control contrary to Congressional intent. Aggregate data, validated with a subsample on an annual or biannual basis with a much smaller sample size makes far more sense. This would be the only practical alternative for a State supervised and County administered system like California's. However, if the requirements are not changed, the practical result is that it would be infeasible to qualify for enhanced 60% JOBS funding, and thus it would not be cost-effective to expend any effort or resources in the attempt. Thus, target-group recipients would be the ones to suffer.

250.44(a)(2) BASIC LITERACY CRITERIA

The inflexible requirement in the Proposed Rule which defines "achieving basic literacy" as the equivalent of successful completion of grade 8 is inappropriate as well as counterproductive. We believe there must be a correlation between the labor market in which the individual resides and the required competency level necessary to enhance a person's long term chances for successful employment. For example, an 8th grade level may be appropriate and necessary for an individual residing in a large industrial community where technological employment is in abundance. However, the same grade level may delay employment opportunities by requiring several years of education for an individual residing in a small rural community where job opportunities do not require that level of education.

In addition, there is a critical flaw in the use of grade level measurement of literacy for adult and secondary students. The proposed standard, eighth grade equivalency, applies to basic educational skills for children ages 13 and 14. It has been nationally recognized that this method of measurement is inappropriate for adult students. The greatest concern in the use of this type of measurement is the lack of integration between work maturity competencies and basic skill competencies in order to obtain successful employment. Thus, we believe there is a need to recognize these factors in order to appropriately assess the need for further educational services.

RECOMMENDATION

We recommend that the basic literacy level requirement be revised to allow states flexibility in determining basic literacy levels based on labor market demands in conjunction with life skills and job experience. For the reasons stated above, we do not support any proposal to impose a higher grade level equivalency requirement than tha contained in the Proposed Rule.

250.20(d)(2) INTERIM STATE PLANS

A State operating a JOBS program under an interim plan is required to submit new JOBS and Supportive Services plans for approval within 60 days of the date that the JOBS and Supportive Services plan preprints are issued. Since it is anticipated that the preprints will be issued at the time of the final Federal regulations, this will give States 60 days to pass legislation to conform to the new Federal rules. Presumably States can wait to publish State regulations and issue changed forms until Federal approval is obtained. However, there is no provision for implementation timeframes after receipt of Federal approval. The 60-day timeframe for submission of the preprint State Plan is impossible to meet especially in States like California where the Legislature is not in session from October (when the final federal regulations will be published) through December. States will be required to state how they will conform when there is no assurance that the Legislature will enact statute changes that match.

RECOMMENDATION

Allow States until July 1, 1990 to submit preprints to conform to the final Federal regulations. Such a date will allow States to analyze the final Federal rules, to enact required legislation and to complete the preprint. In addition final Federal regulations should allow for an implementation timeframe following receipt of Federal approval. Large States which are county-administered need time to write and publish State regulations, change forms, and provide training. We would suggest a minimum of three months from receipt of final Federal approval (assuming that the Federal Government would take 90 days to approve the preprints).

250.76(c)(1) FINANCIAL REPORTS, RECORDS, STATEMENTS, AND AUDITS

JOBS program funds are governed by the administration of grant regulations in 45 CFR, Part 92. The majority of welfare programs administered by the State and County are subject to Parts 74 and 95. Administration of programs under separate regulations is difficult and has the potential to create errors in fiscal records and reports.

RECOMMENDATION

Revise the regulations to specify that JOBS program funds are governed by parts 74 and 95 to allow consistency in the administration of welfare programs.

250.44 MANDATORY COMPONENTS

The JOBS program in each State may combine services or activities into one program activity as long as the State can identify each principal component for Federal reporting requirements. If separate tracking is required for each component, the State does not have the option of combining the components into a single activity. The requirement is especially onerous to States which currently operate major work programs.

RECOMMENDATION

States should be allowed to combine the approved components and complete Federal reports based on the State's configuration of components.

250.7(d) JOBS ALLOCATION ENTITLEMENT, SUBPART H - FUNDING

A State must liquidate all Title IV-F grant awards not later than one year after the end of the fiscal year for which the funds were awarded and obligated. The Federal share of unliquidated obligations will be returned to the Federal Government.Section 482(a)(2) of the Social Security Act identifies the State IV-A agency as the State agency responsible for the administration/supervision of the JOBS program. Currently, IV-A agencies operate under the claiming requirements contained in 45 CFR, Part 95, Subpart A. This subpart establishes a two-year time limit for a State to claim Federal Financial Participation. The IV-A work programs which will be repealed and incorporated into the JOBS program are under the two-year claiming limitations of 45 CFR, Part 95, Subpart A.

RECOMMENDATION

We recommend that the Federal requirements for the time limitations for claiming costs under Title IV-F be consistent with the IV-A claiming requirements.

California Legislature

JOINT OVERSIGHT COMMITTEE
ON
GAIN IMPLEMENTATION

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June 15, 1989

Honorable Dan Rostenkowski
U.S. House of Representatives
Russell House Office Building
Washington, D. C. 20510

Dear Representative Rostenkowski:

As the Chair of the Joint Oversight Committee on Implementation of the Greater Avenues for Independence (GAIN) Program for the California State Legislature, I would like to submit the following comments for the record regarding the preliminary regulations issued by the Department of Health and Human Services on the Family Support Act. As you know, the GAIN program was one of the state programs used as a model during the development of the Job Opportunity and Basic Skills (JOBS) portion of the Family Support Act.

I respectfully suggest the regulations focus on ensuring that state JOBS programs achieve desired outcomes rather than on detailed policy and implementation issues that may best be answered by individual states. My reading of the JOBS legislation suggests that Congress wanted states to provide the education and training services needed to help AFDC recipients find jobs and become self-supporting. To achieve that goal, I believe Congress intended to provide states with the flexibility to design programs that respond to local economic conditions and cultural beliefs, to say nothing of political realities.

For the most part, the Department of Health and Human Services' regulations preserve state flexibility intended by Congress. There are some exceptions, however. In the pages that follow, I discuss five specific areas in the regulations that California's experience with the GAIN program suggests should be modified. These specific areas illustrate two principles

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that, if reflected in the regulations, I believe would help states implement the JOBS program in the most effective manner possible. These two principles are as follows:

- Create incentives for states to target those AFDC recipients who need help to find a job and become self-supporting. While most studies show the largest gains come from serving longer-term recipients, states find it difficult to focus resources on this group. The regulations should attempt to encourage states to serve this needy population. In some instances, however, the regulations further reduce the likelihood that longer-term recipients will be served.

- Minimize program requirements that result in significant costs at the state and local level--costs that reduce the options available to states in designing programs that respond to local needs and conditions. States are often working within extremely restrictive funding constraints. In mandating specific program policies or administrative procedures, the regulations often reduce both the policy and financial flexibility important to making state programs work. In some cases, the reduced fiscal flexibility may frustrate states from achieving the very policy goals the regulations were designed to promote.

"Participation" Should Be Defined More Broadly

The HHS regulations require a JOBS participant make "good and acceptable progress" in an education component in order to count that client as participating. Because meeting certain participation targets will affect federal funding ratios, the definition of participation could significantly affect state behavior.

The good progress requirement is a concern because it introduces an element of financial risk to states that provide education to the hard-to-serve; that is, if certain types of clients do not make "good progress," the state could lose federal funds as a result. As a consequence, the regulations clearly create an incentive to serve those participants who are most likely to make good progress.

Creating this type of incentive runs counter to the lessons gained over the last 10 years. Most of the program evaluations I have read on the value of education and training to welfare recipients suggest that targeting services to those who are most likely to succeed--or "creaming"--is not the most cost-effective use of resources. Instead, experience shows that helping those who have significant barriers to employment yields the highest dividends.

Therefore, I recommend handling good progress separately from the issue of determining JOBS participation rates. Our experience suggests the most realistic way of counting participation is to use a point-in-time measure, as the Manpower Demonstration Research Corporation uses in its evaluation of state welfare employment programs. This would permit HHS to calculate consistent state participation rates while eliminating the incentive for states to serve those who are likely to succeed without JOBS education and training services.

"Participation" Should Include Orientation and Assessment

A second requirement that could encourage states to adopt a strategy of creaming is the determination in the regulations that a client's involvement in orientation and assessment does not constitute "participation" for the purposes of establishing federal funding ratios. Since the GAIN program design requires orientation and educational assessment at the very beginning of the program, California's program would not register a person as participating until after completing these very important program components.

I fear this requirement will lead states to focus on those participants who are relatively easy to serve, at the expense of those who are not interested in participating in the program. In the GAIN program, orientation is crucial to the process of encouraging the participation of those who really need education and training assistance. If states are not given credit for participation in orientation, states will maximize participation in the education and training components.

The result is maximizing the participation of clients who might succeed without benefit of such a program, rather than maximizing participation of those whom the program should really target--the chronic welfare recipient who might initially hesitate to participate. Our experience in

California is that many GAIN clients are reluctant to enter the program. Once participating, however, many clients develop a greater enthusiasm for the program as they appreciate the value of the services. To ensure that state programs do not simply maximize participation of those who are easy to serve, the regulations should be altered to count involvement in orientation and assessment as "participation."

States Need Flexibility in Setting Literacy Requirements

The preliminary federal regulations require state literacy programs under JOBS to bring adult math and reading skills up to the eighth grade level. As an ardent supporter of education, the eighth grade level does not seem too high. I fear, however, that the cost of attaining eighth grade competencies will reduce the flexibility of states in creating responsive local programs. In California, I worry that the requirement will increase education costs so dramatically that the state will be forced to eliminate education assignments that are optional under the Family Support Act.

Education is expensive. More than half of all GAIN participants are assessed as needing to develop very basic math and English skills. In California, we spend $100 million a year--almost one-third of the total program cost--to provide basic and remedial education and needed support services to GAIN participants. And the federal regulations would only increase the cost of GAIN education services.

The cost of attaining the HHS education standard may deter many states from creating broad education requirements for their welfare populations. This would be unfortunate, because the education requirements in JOBS are some of the program's most innovative features--and I believe will result in the greatest lasting effect on clients. By setting the education standard too high, however, HHS risks reducing the impact of the education options created by the Family Support Act.

The cost of the education standard is a very real concern for us in California. If the federal regulations require California to use the eighth grade standard to provide education, we may have to redesign GAIN in order to reduce program costs. Ironically, this could mean that any high school or college level instruction in the GAIN program, that is optional under the JOBS program, would be deleted.

As a result, taking federal action to increase education attainment could create the unintended effect of **reducing** the number of GAIN participants who receive basic or remedial education. Therefore, I recommend changing the regulations to permit states the flexibility to make appropriate decisions so that individual needs and local resources can be factored into the decision of how much education to provide.

Child Care Administration Should Be Streamlined

The Family Support Act guarantees child care to AFDC participants who are in "state-approved education or training programs" outside of the JOBS program. The regulations, however, significantly affect that guarantee by requiring states to create a large new bureaucracy to administer the child care benefits. Specifically, HHS would require states to develop an employment plan and to track the progress of each non-JOBS recipient who receives child care.

While these requirements may appear modest, the new administrative mechanisms will be expensive to administer. In addition to the cost of the administration, states also will have to support a portion of the cost of the new child care benefits.

Together, the new costs could play a significant role in the allocation of state funds for education and training as well as supportive services under the Family Support Act. Certainly, in California, funding for GAIN and related supportive services is a zero-sum game, and the additional administrative costs to provide child care could result in two possible outcomes. First, high child care administration costs could reduce overall state support for the GAIN program, thereby reducing the number of participants who receive services. Second, the state may reduce child care reimbursement rates to non-JOBS clients than would otherwise be the case. Lower rates would reduce the types and quality of child care that would be available to program participants.

Neither option is desirable, especially when the need for such elaborate administration of the child care benefits remains unclear. Therefore, I recommend that the regulations reflect only the minimum administrative requirements needed to ensure that a client is enrolled in approved education or training and to monitor the client's situation over time.

Contracting for Case Management Should be Prohibited

Despite my general position that the federal regulations should maintain state flexibility in designing and operating JOBS programs, there is one area where I believe the regulations should take stronger action in regulating state programs. (Who said consistency is the hobgoblin of small minds?) This is in the area of contracting with private for-profit firms to provide case management services to JOBS participants.

The regulations as proposed appear to allow states to contract for almost any activity or service in a state JOBS program with the exception of actual program design and any activity that may affect a client's AFDC grant. This interpretation of the statute adopts the broadest possible authority to contract with outside agencies for JOBS activities.

As you may know, we have been discussing this issue in California because Los Angeles County has chosen to contract case management with a private consulting firm. I have opposed the county's proposal for three reasons. First, I believe existing law precludes contracting for case management with a private agency. Case law prohibits welfare agencies from contracting for "discretionary" activities. I would argue that making such sensitive decisions as whether a client had "good cause" for not participating in the program or whether a client should be sent to job training or work experience constitutes a discretionary act. Clearly, case managers have significant influence over these types of decisions, which ultimately play an important role in a client's future.

Second, contracting for case management services defeats one of the major goals of the Family Support Act--reforming the welfare system. For too long, welfare departments have been obsessed with technical concerns like error rates and the timing of recipient income statements. While administrative issues are important, I believe the Family Support Act was intended to redirect the attention of welfare departments to helping recipients get off of welfare.

As basic as it sounds, this represents a very major change, an institutional change that affects the behavior of top decision makers and line workers alike. We are witnessing this kind of change in many counties that have administered GAIN. Broadening the perspective of welfare agencies will lead to some exciting new changes in welfare policy in the coming years. But, by allowing states to contract out for case management, the federal government will allow welfare agencies to continue the narrow administrative focus that has characterized the program for the last 20 years, and thereby frustrate true reform of the welfare system.

Third, I do not believe that a for-profit agency should be making sensitive decisions about a client's future while it also protects the company's profit margin. In California, welfare departments contract for case management services with other units of government--usually JTPA providers or education agencies--in order to take advantage of another agency's expertise. In no other case outside of Los Angeles County, however, do counties contract for case management services with private for-profit companies, where the need for extensive counseling and assessment may interfere with the profit motive.

For these reasons, I recommend that HHS amend its regulations to prohibit the use of for-profit non-governmental agencies to provide case management services under the JOBS program. While this prohibition would restrict state flexibility to contract for services and may result in higher costs for case management, I believe that this restriction is needed in order to protect the interests of clients in the administration of state programs and to promote true welfare reform.

To conclude, I want to thank you for the opportunity to express my views on the HHS regulations. I believe that Congress has turned the ship of state onto a new and more-promising course insofar as welfare is concerned. With a few changes, I believe the Family Support Act regulations will give states the flexibility needed to design programs that meet local needs, while, at the same time, it allows states to target resources to those who need assistance to find a job and become self-supporting.

Sincerely,

DELAINE EASTIN

DE:pwc

SUBMITTED JUNE 8, 1989 BY
CAROL RONEN, EXECUTIVE ASSISTANT TO THE COMMISSIONER
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THE DEPARTMENT OF HUMAN SERVICES IS THE SOCIAL SERVICE ARM OF THE CITY OF CHICAGO, CHARGED WITH THE DELIVERY OF DIRECT SERVICES TO NEEDY FAMILIES AND INDIVIDUALS. BECAUSE MANY OF THOSE WE SERVE ARE DEPENDENT ON THE AFDC SYSTEM, AND BECAUSE OF THE OVERALL IMPACT THAT WELFARE REFORM COULD HAVE ON IMPOVERISHED FAMILIES IN OUR CITY, WE ARE VERY CONCERNED ABOUT THE IMPLEMENTATION OF THE FAMILY SUPPORT ACT OF 1988.

IN AUGUST OF 1987 OUR DEPARTMENT CONVENED AN ADVISORY GROUP TO MONITOR FEDERAL WELFARE REFORM LEGISLATION AND DISCUSS THE POLICY IMPLICATIONS OF THESE PROPOSALS. "THE FEDERAL WELFARE WATCHDOG GROUP," AS IT IS CALLED, IS A BROAD COALITION OF OVER 30 SOCIAL SERVICE PROVIDERS AND ADVOCATES IN ILLINOIS WHO WILL BE IMPACTED BY CHANGES IN THE WELFARE SYSTEM. WE ACTIVELY FOLLOWED THE WELFARE REFORM PROCESS, SHARING INFORMATION THROUGH NUMEROUS NETWORKS, MEETING WITH KEY LEGISLATIVE STAFF, AND ADVOCATING FOR IMPROVEMENTS WHICH WOULD MAKE THE LEGISLATION MORE EFFECTIVE AND LESS PUNITIVE. IT IS ON BEHALF OF BOTH THE DEPARTMENT OF HUMAN SERVICES AND THIS STATEWIDE COALITION THAT I VOICE CONCERNS ABOUT THE REGULATIONS FOR THE FAMILY SUPPORT ACT PROPOSED BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES(HHS). WE ARE PLEASED THAT THIS SUBCOMMITTEE IS MONITORING THE IMPLEMENTATION OF THE BILL IT WORKED SO HARD TO CRAFT.

WHILE THE FINAL FAMILY SUPPORT ACT DOES NOT GO AS FAR AS WE WOULD HAVE HOPED, IT CERTAINLY REPRESENTS MOVEMENT IN THE RIGHT DIRECTION AND INCLUDES SOME VERY POSITIVE, NECESSARY PROVISIONS. UNFORTUNATELY, TWO OF THE PROVISIONS MOST WELCOMED BY GROUPS IN ILLINOIS-- THE PRIORITY RANKING OF VOLUNTEERS AND THE GUARANTEE OF CHILD CARE-- NOW APPEAR TO BE THREATENED BY THE PROPOSED REGULATIONS. WE ARE ALARMED AT THE WAY IN WHICH HHS APPEARS TO ALTER THE INTENT OF CONGRESS IN THESE AREAS.

AS YOU ARE AWARE, THE LEGISLATION MANDATES, THROUGH A REQUIREMENT TO STATES, THAT VOLUNTEERS WITHIN THE TARGET GROUPS BE THE TOP SERVICE PRIORITY. IT IS CLEARLY STATED IN THE LAW THAT STATES "...WILL GIVE FIRST CONSIDERATION TO APPLICANTS FOR, OR RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN WITHIN ANY [TARGET] GROUP WHO VOLUNTEER TO PARTICIPATE IN THE PROGRAM (TITLE II SEC. 201)."

WHILE THE ACTUAL PROPOSED REGULATION ON THIS POINT (SEC.250.31) REFLECTS THIS INTENT, THE LANGUAGE IN THE PREAMBLE TO THE REGULATIONS SERIOUSLY UNDERCUTS IT. THE PREAMBLE DEFINES SEVERAL FACTORS OUTSIDE OF TARGET GROUPS AND VOLUNTEERS WHICH STATES WOULD BE ABLE TO USE IN DETERMINING PRIORITIES. AMONG THESE ADDITIONAL FACTORS IS "...THE EFFECT OF SELECTION OF INDIVIDUALS TO PARTICIPATE ON THE STATE'S ABILITY TO MEET PARTICIPATION RATE STANDARDS (SEC.250.31(a))." IN OTHER WORDS, SERVICE PRIORITY MAY BE DETERMINED BY USEFULNESS IN MEETING PARTICIPATION REQUIREMENTS PLACED ON STATES, RATHER THAN BY WHICH CLIENTS ARE MOST IN NEED OR WOULD MAKE BEST USE OF THE PROGRAMS OFFERED. OUR FEAR IS THAT STATES COULD INTERPRET THIS TO MEAN THAT THEY COULD TURN AWAY VOLUNTEERS WHO WANT TO ENTER PROGRAM COMPONENTS WHICH DO NOT FULFILL THE DEFINED NUMBER OF HOURS NEEDED TO COUNT TOWARDS THE STATES PARTICIPATION RATE. FOR INSTANCE, THE MOTHER OF AN INFANT WHO WOULD BE EXEMPT FROM MANDATORY PARTICIPATION BUT DESIRES TO TAKE A GED COURSE MIGHT BE REFUSED SLOT IN THE JOBS PROGRAM BECAUSE THE COURSE DOESN'T MEET FOR THE PRESCRIBED 20 HOURS PER WEEK TO HELP THE STATE MEET PARTICIPATION REQUIREMENTS. IT IS NOT SOUND PUBLIC POLICY TO DISCOURAGE PARTICIPATION IN SUCH A COST EFFECTIVE ACTIVITY BY A MOTIVATED CLIENT. THIS NEW EMPHASIS ON FULFILLING PARTICIPATION RATES AT THE COST OF DENYING SERVICES IS INEFFICIENT AS WELL AS INJUST. THIS LOOPHOLE IN THE PRIORITY FOR VOLUNTEERS SYSTEM TURNS THE PROGRAM AWAY FROM THE MORE HUMANE, POSITIVE APPROACH THAT CONGRESS INTENDED, BACK TOWARDS A COERCIVE APPROACH.

WE BELIEVE IT IS CRITICAL THAT THE REGULATIONS CONSISTANTLY STRESS THE VOLUNTARY NATURE OF THE SYSTEM CONGRESS HAS ENACTED, SO THAT STATES ARE ENCOURAGED TO CREATE POSITIVE PROGRAMS THAT HELP RATHER THAN PUNISH PARTICIPANTS. SINCE THERE ARE FAR MORE PEOPLE ON WELFARE WHO WANT AND NEED TRAINING THAN THERE ARE FUNDS AVAILABLE TO PROVIDE TRAINING, MOST PROGRAMS COULD BE EASILY FILLED WITH VOLUNTEERS. THE KEY IS TO DEVELOP QUALITY PROGRAMS WHICH PROVIDE MEANINGFUL SERVICES, ARE ADMINISTERED IN A HUMANE MANNER, AND ARE WELL-MARKETED. CLEARLY, IT IS BOTH MORE EFFICIENT AND MORE HUMANE TO SERVE VOLUNTEERS FIRST.

THE PROPOSED REGULATIONS ALSO UNDERMINE AND INAPPROPRIATELY RESTRICT THE CHILD CARE GUARANTEE AND SERVICES THAT ARE SUCH AN INTEGRAL PIECE OF THE FAMILY SUPPORT ACT. THE CURRENT NATIONAL FOCUS ON CHILD CARE CONFIRMS WHAT CONGRESSIONAL WELFARE REFORMERS RECOGNIZED IN DESIGNING THE ACT: CHILD CARE PLAYS A CRITICAL, FUNDAMENTAL ROLE IN ENABLING PARENTS TO WORK.

THERE ARE A NUMBER OF SERIOUS PROBLEMS IN THE PROPOSED REGULATIONS' INTERPRETATION OF CHILD CARE ISSUES. HERE WE WILL ADDRESS TWO KEY ITEMS. FIRST OF ALL, THE REGULATIONS WEAKEN THE GUARANTEE OF CHILD CARE IN TWO DIFFERENT WAYS, IN THE PREAMBLE, AND AGAIN THE IN SUPPORTIVE SERVICES PLAN. WE FIND IT DISTURBING THAT HHS SHOULD TAKE STATUTORY LANGUAGE WHICH DEFINES A CLEAR GUARANTEE TO CHILD CARE FOR ALL PARTICIPANTS IN THE JOBS PROGRAM WHO NEED IT, AND TRANSLATE IT IN THE PREAMBLE INTO A 'CONDITIONAL ENTITLEMENT' THAT APPLIES ONLY TO MANDATORY JOBS PARTICIPANTS (SEC. 250.35(b)). CHILD CARE SUPPORTS FOR VOLUNTARY PARTICIPANTS -- EVEN THOSE FROM GROUPS TARGETED IN THE ACT -- ARE NOT REQUIRED UNDER THE PROPOSED REGULATIONS. THIS REDIRECTION OF THE ACT AGAIN DISCOURAGES VOLUNTARY PARTICIPATION BY REDUCING THE SUPPORT SERVICES NEEDED BY FAMILIES TO PARTICIPATE SUCCESSFULLY IN WELFARE-TO-WORK PROGRAMS.

THIS UNDERMINING OF THE CHILD CARE GUARANTEE IS FURTHERED IN HHS' DESCRIPTION OF THE SUPPORTIVE SERVICES PLAN THAT STATES ARE TO PREPARE. IN THE PLAN, STATES MUST DESCRIBE 1) WHAT PRIORITIES THEY WOULD USE TO DETERMINE WHEN CHILD CARE WOULD BE GUARANTEED, AND, 2) HOW THEY WILL ASSURE SUFFICIENT CHILD CARE TO MEET REQUISITE FEDERAL PARTICIPATION RATES. THESE TWO REQUIRED DESCRIPTIONS DISTORT THE MEANING OF THE CAREFULLY CHOSEN WORD 'GUARANTEE:' IN DEFINING WHEN A STATE WILL GUARANTEE CARE, THEY ALLOW FOR DENIAL OF CARE IN SOME CASES; IN PLANNING FOR AVAILABILITY OF CHILD CARE RESOURCES ONLY FOR THOSE RECIPIENTS THAT HELP THE STATE MEET THE MINIMUM PARTICIPATION RATES, THEY ALLOW FOR THE DENIAL OF CARE TO OTHER RECIPIENTS.

THE FINAL REGULATIONS NEED TO MIRROR MORE ACCURATELY THE ACT'S GUARANTEE OF CHILD CARE SERVICES TO ALL PARTICIPANTS AND BAR STATES FROM LIMITING SERVICES TO CERTAIN GROUPS.

THE SECOND URGENTLY NEEDED REVISION IN THE PROPOSED REGULATIONS REGARDING CHILD CARE PERTAINS TO THE GUARANTEE OF 12 MONTHS OF TRANSITIONAL, OR EXTENDED CHILD CARE. THE REGULATIONS CREATE AN UNNECESSARY ADMINISTRATIVE REQUIREMENT THAT CLIENTS REAPPLY FOR SUCH SERVICES IN WRITING. THIS WILL BE A BURDEN FOR BOTH CLIENTS AND STATE WELFARE AGENCIES: AND IS LIKELY TO REDUCE THE NUMBER OF FAMILIES LEAVING THE WELFARE ROLLS FOR WORK WHO RECEIVE THIS ABSOLUTELY CRUCIAL SUPPORT. IT IS MUCH SIMPLER FOR STATES TO DETERMINE ELIGIBILITY FOR TRANSITIONAL CARE WHEN AFDC INELIGIBILITY IS ASSESSED, AT WHICH TIME THE STATE AGENCY HAS ALL THE INCOME INFORMATION NECESSARY TO MAKE BOTH DETERMINATIONS. UNDER THE SCENARIO LAID OUT BY THE PROPOSED REGULATIONS, A NOTICE OF THE NEED TO REAPPLY FOR CHILD CARE SERVICES WOULD BE SENT SHORTLY BEFORE THEY WERE TO BE CUT OFF, MAKING IT MORE THAN LIKELY THAT A GAP IN SERVICE WOULD OCCUR BEFORE NEW FUNDING WAS APPROVED AND PROCESSED. FOR MOST PARENTS THIS GAP WOULD MEAN THE LOSS OF A CHILD CARE SLOT OR PROVIDER AND A THREAT TO THEIR EMPLOYMENT, UNDERMINING THE MAIN GOAL OF THE ACT.

THE IMPLEMENTATION PROCESS FOR TRANSITIONAL CHILD CARE BENEFITS SHOULD EMPHASIZE CONTINUITY OF CARE FOR CHILDREN, ENCOURAGE EFFICIENCY IN STATE AGENCIES, AND REDUCE PAPERWORK BURDENS ON NEWLY EMPLOYED FAMILIES. THESE GOALS CAN BE ACCOMPLISHED QUITE SIMPLY, IN THIS CASE, BY DELETING THE REQUIREMENT FOR REAPPLICATION FOR EXTENDED CARE FROM THE PROPOSED REGULATIONS AND MAKING ELIGIBILITY ASSESSMENT AND ENROLLMENT AUTOMATIC.

WHILE THERE ARE MANY AREAS OF THE HHS PROPOSED REGULATIONS WHICH MERIT REVISION, WE HOPE THAT THE PRIORITY FOR VOLUNTEERS AND THE COMMUNICATION OF A COMPLETE GUARANTEE OF CHILD CARE FOR THOSE WHO NEED IT TO PARTICIPATE WILL BE AMONG THE ISSUES ADDRESSED BY AUTHORS OF THE FINAL REGULATIONS.

THANK YOU FOR THIS OPPORTUNITY TO COMMENT PUBLICLY ON THE IMPLEMENTATION OF THE FAMILY SUPPORT ACT OF 1988. WE FEEL CERTAIN THAT THIS SUBCOMMITTEE WILL CONTINUE TO MONITOR THE WELFARE REFORM PROCESS TO ENSURE THAT THE SPIRIT, AS WELL AS THE LETTER OF THE LAW ARE CARRIED OUT.

STATEMENT OF THE CHILD WELFARE LEAGUE OF AMERICA, BY DOUGLAS BAIRD, CHIEF EXECUTIVE OFFICER, ASSOCIATED DAY CARE SERVICES OF METROPOLITAN BOSTON

SUMMARY OF RECOMMENDATIONS

The Child Welfare League of America recommends that the Subcommittee insist that the proposed child care regulations for the Family Support Act, including the preamble, reflect Congressional intent by:

- **Stating that, if child care resources are not provided under the Act's guarantee, the recipients are exempt from participation requirements, and striking references that would condition the guarantee on State appropriation ceilings or target group priorities.**
- **Striking references to limited entitlement and free informal arrangements.**
- **Removing the Federal age limit for child care.**
- **Withdrawing the 75th percentile stipulation for local market rates, and, instead, encouraging States to establish local market rates that reflect the full cost of child care necessary to remove this barrier to self-sufficiency.**
- **Reviewing the proposal on written applications as a condition of eligibility for transitional child care and making recommendations to ensure that such applications do not become barriers to continuity of care for children and permanent employment for parents.**
- **Incorporating State plans for supportive services within the State JOBS plan rather than a separate plan.**
- **Striking the reference at 255.1 (d) to priorities to be applied when determining when needed child care will be guaranteed.**
- **Removing the prohibition at 255.4 (f) on Federal reimbursement for the recruitment or training of child care providers, resource development, or licensing activities.**
- **Requiring States to describe procedures established to ensure that child care meets applicable standards of State and local law and parental access, rather than merely furnishing assurances that such procedures exist.**

My name is Douglas Baird, and I am Chief Executive Officer of Associated Day Care Services of Metropolitan Boston, New England's oldest and largest charitable day care agency, and Chair of the Child Welfare League of America's National Task Force on Child Day Care. The Child Welfare League appreciates the opportunity to present testimony on the child care provisions of the Proposed Regulations for implementation The Family Support Act of 1988, Public Law 100-485, issued by the Department of Health and Human Services, Family Support Administration on April 18, 1989. We would like to commend the Chairman and the Subcommittee for holding this oversight hearing on some very important issues affecting America's youngest, poorest, and most vulnerable citizens.

The Child Welfare League is the oldest and largest membership organization of more than 525 child serving agencies and 1,200 affiliates throughout North America, comprised of both public and voluntary providers, serving children, youth, and families in need of adoption, child care, foster care, family support services, parenting skills, teen pregnancy services, residential and group homes, emergency shelter care, and other basic supports. Many of the children served by CWLA member agencies are deprived, neglected, and abused. In other words, we work with some of the most troubled and needy children in the country.

Since 1878, Associated Day Care has been serving children from low income families in the Boston area. One hundred years ago the agency served populations of European immigrants during the settlement house era. Today the agency serves southeast Asian and Pan-American as well as Black and Hispanic low income families. While the population has changed over the century, the mission remains the same: provision of essential services to allow families to become self-supporting. The agency received the first State contract to provide child care for AFDC recipients when that program was instituted in 1968. Today we serve 500 preschool children, ages one month to six years, in two family day care network programs and seven day care centers in public housing sites and multi-lingual, multi-cultural neighborhoods. The current racial/ethnic composition of families served is: 43.6 percent Hispanic; 29.5 percent Black; 11.9 percent White; 7.1 percent Haitian; 3.4 percent Asian; 2.1 percent West Indian; and 2.4 percent Cape Verdean.

Associated Day Care is proud to have contributed to Massachusetts' significant progress in building a permanent route out of poverty for welfare recipients through the Employment and Training CHOICES (ET) program, a major model for the Federal welfare reform legislation. According to the latest estimates, since ET began in 1983, over 57,000 recipients have been placed in unsubsidized jobs, with over 75 percent still off welfare. ET has saved taxpayers over $280 million through FY 1988 in reduced welfare costs and increased revenue from taxes and social security payments, after deducting all program costs. A major component of this successful program is the provision of day care services to low income families. Concurrent with the implementation of ET, Massachusetts invested heavily in expansion and improvements in child care resources under a Governor's Day Care Partnership Initiative, and the final report concludes that, "The central role played by day care in the success of the State's ET program has made it clear that subsidized day care is a necessary component of any program intended to help welfare recipients with young children become economically self-sufficient. It is equally clear that the subsidy cannot end when the former recipient's income reaches the poverty line, but must be continued on a sliding scale until the parents' income is sufficient to pay the full cost of care."

Much of the impetus for enactment of The Family Support Act of 1988 was derived from the recognition that the world has changed significantly since the Aid to Families with Dependent Children (AFDC) program was enacted in the 1930s, and that it is necessary to take these changes into account if we are to have any hope of affording real and lasting help to needy, dependent children. Indeed times have changed since 1935. The original legislation specified that AFDC was for children with no fathers to support them. Today, two-thirds of all mothers with children younger than 14 are in the work force (U.S. Department of Labor) and many are single heads of households. While the Family Support Act takes these new family patterns into account, the proposed regulations, as they apply to child care for AFDC recipients, do not. There remains an underlying, and we believe unfounded, assumption that AFDC households include large numbers of women not in the official labor force who can provide free day care.

Mr. Chairman, as one of the leading experts on welfare issues, I am sure that you are well aware that the AFDC program is a program for children - to assure basic resources are provided for children who have little or no support - and only secondarily for caretaker parents in their role as caretakers of children. It is my hope that you will convey this understanding to the proper authorities at the Family Support Administration who, in these proposed regulations, appear to be addressing fiscal constraints and the one-third of the AFDC population consisting of adults.

I am here today on behalf of the Child Welfare League to suggest some of the ways in which the proposed regulations should be revised if AFDC is to fulfill its primary responsibility to provide basic care for needy children, and, in fact, if the employment programs are to succeed in moving adult recipients into permanent jobs.

AFDC families are not altogether different from all other families in the population, and many of the findings of the Fortune magazine survey on child care and parents' job performance apply to poor families as well as middle class and upper income families: parents who have problems finding child care are much more likely to be absent, come late, leave early, and spend unproductive time at work. The procedures and guidelines States are required to follow in implementing the child care provisions of the Act will have direct consequences on the probabilities that welfare parents will use the JOBS programs to move into self-sufficiency by securing and retaining employment.

In examining the regulatory proposals it is important to remember that mothers of very young children and teen mothers are target populations for this program and many will be required to attend educational activities, regardless of the age of their babies. This means that care will be required for many more infants, a particularly vulnerable population. The Family Support Act is venturing into some new territory, not fully explored in the work program demonstration projects of recent years. In her report on evaluations of State work and welfare initiatives in the 1980s, Judith Gueron, President of the Manpower Demonstration Research Corporation, states that, "An open question concerns the broader implications of an ongoing participation requirement on family formation, the well-being of children, and attitudes toward work," and points out that, "It is important to note that child care was not a major issue in these programs, since their requirements were mostly short-term and limited mainly to women with school-age children."

Likewise a CWLA Research Department study of services to pregnant and parenting adolescents, published May 11, 1989, finds that 77 percent of member agencies surveyed provide child care as an integral part of services to the teen population.

In our reading of the regulations document, we find substantial contradictions between the proposed regulations and the preamble to the proposed regulations, and between the entire document and the Act. It is our understanding that the preamble has some legal standing, and, more importantly, that the preamble is intended to describe in more detail what is intended in the regulations. Our primary concern is the repeated references to the child care guarantee as a "conditional" guarantee.

Fiscal Limitations and the Availability of "Free" Child Care

- The Preamble (p. 15666, *Child Care and Other Work Related Supportive Services During Participation in Employment, Education and Training, Eligibility*) states, under *Child Care Guarantee*, that, " The State IV-A agency must guarantee child care for an eligible family if resources are available. The guarantee may be limited by State appropriation ceilings, the available supply of other State, local, and federally-funded services, such as Title XX services, and the target group priorities."

It is our reading of the statute that, if resources are not available, the parent is exempted from the required JOBS activity and that this is in no way subject to State appropriation ceilings or target group priorities.

The Child Welfare League recommends that the Subcommittee insist that the proposed regulations, including the preamble, reflect congressional intent by stating that, if child care resources are not provided under the Act's guarantee, the recipients are exempt from participation requirements, and by striking references that would condition the guarantee on State appropriation ceilings or target group priorities.

- The Preamble (p. 15666, Part 255-*Child Care and Others Work Related Supportive Services During Participation in Employment, Education, and Training, Eligibility*) further states that, "The State IV-A agency is not required to treat child care benefits under this Part of the proposed regulations as an absolute entitlement and to provide all employed recipients and participants in JOBS with child care benefits. Frequently, child care is provided through informal arrangements at no cost. The child care guarantee does not mean that paid child care must be available for every participant."

We find no statutory basis for the first statement, and very little real life basis for the free informal arrangements assumption. Child Welfare League staff spoke with some of the State Social Services Departments last week. On the issue of free informal arrangements, the Colorado Department says there is some free grandmother or neighbor care but the demand far exceeds the supply, and a supply of free care for infants does not exist. A study contracted by the Texas Department indicates long waiting lists for subsidized slots and lack of child care as a major barrier to employment. The Oklahoma Department pays for in-home and relative care as do Minnesota and Massachusetts. In fact, a Massachusetts Office for Children affordability survey indicates that payments for relative care may run as high as $6,000 a year.

We also have a concern that the strong emphasis on informal arrangements gives a dangerous signal with respect to the quality of care and discourages State efforts to improve child care standards and enforcement, in contrast to the statute's emphasis on appropriate, licensed, quality care.

The Child Welfare League recommends that the Subcommittee insist that the proposed regulations, including the preamble, reflect congressional intent by striking the cited references to limited entitlement and free informal arrangements.

Limiting Child Care to Children under Age 13

The Preamble (p. 15666, *Child Care Guarantee*) proposes to limit the guarantee of child care to those families with dependent children under 13 , referencing this as "a reasonable policy consistent with the limits enacted for the Dependent Care Tax Credit... reflecting widely-held views on appropriate governmental participation in expenditures for child care services."

The proposal disadvantages after-school and summer programs for young teens who may be the children most in need of supervision while their parents are absent from home. Given current problems with drugs and teen pregnancy, limiting the programs to those under age 13 seems short sighted as a Federal policy. Localities are probably best equipped to determine care needed for this population who are in school fewer hours per day than the working hours of parents and are out of school in summer and holidays.

Social Services Departments in New York and Minnesota report that they will be lowering their age limits from 15 to 13 under the new program proposals, despite the fact that they have maintained the age 15 limit in their welfare demonstration programs. Massachusetts, which is already into a more advanced program development stage aiming sub-programs at the harder-to-serve segments of the recipient population, suggests that it would be more productive to leave the child care age limit up to the States and localities.

The Child Welfare League recommends that the Subcommittee insist that the regulations reflect congressional intent to encourage State initiatives by removing the Federal age limit.

Market Rates and the 75th Percentile

The Preamble (p. 15668-9, *Allowable Costs and Matching Rates, Local Market Rates*) proscribes that, "The State IV-A agency would have to base the rates on a representative sample of providers...and establish local market rates at the 75th percentile."

The Colorado Department sets these rates at a county level with differentials by community and reports that the regulatory proposal of the 75th percentile would significantly disadvantage the supply and clients. Minnesota pays subsidies equivalent to full cost of care (limited to 125 percent of the median charge for similar child care arrangements), and estimates that the 75 percentile market rate would reduce availability of care. New York State will be reducing its market rate to conform to the new regulation. Texas Title XX providers likewise report problems with this proposal.

The Child Welfare League recommends that the Subcommittee insist that the proposed regulations reflect congressional intent by withdrawing the 75th percentile stipulation, and, instead, encourage States to establish local market rates that reflect the full cost of child care necessary to remove this barrier to self-sufficiency.

Application Requirements for Transitional Child Care

We can find no reference in the statute to a requirement (Preamble, p. 15671; Regulations, Part 256.2) that families moving into the transitional child care category must apply for that benefit in writing. Since the Department has chosen to insert this requirement into the process, we suggest a need for additional procedural requirements to ensure continuity of care for the children, as well as continuity of parents' ability to meet work requirement hours. We are troubled by the lack of provision for an immediate transition. If the application remains a requirement, there should be provisions specifying how the family is to be informed and assisted in making the application prior to the change. We suggest that there should also be some requirement that applications be processed in a timely manner to facilitate the transition. This is all the more urgent in view of the reference to the 12 month eligibility period's commencing the day AFDC eligibility ceases, and the provision that there be no retroactive payments.

The Child Welfare League recommends that the Subcommittee review the proposal on written applications as a condition of eligibility for transitional child care and make recommendations to the Department to ensure that such applications do not become barriers to permanent self-sufficiency for low income families.

State Plans, Proposed Regulations 255

The Child Welfare League recommends that State plans for supportive services be incorporated within the State JOBS plan, since there is a necessary relationship between plans for child care services and all aspects of the JOBS activities plans, and child care services are an absolutely critical service with respect to whether or not the parent can meet the employment requirement responsibilities.

At 255.1 (d) the regulations propose "a description of the priorities to be applied in determining when needed child care will be guaranteed for accepting or maintaining employment and for education or training." (emphasis added) Since the child care is mandated for participants, including volunteers and self-initiated programs, it is not clear what is intended to be prioritized. If the State agency determines that there is a shortage of funds and/or child care providers and slots, it would be reasonable for the State agency to establish some priority guidelines with respect to serving target groups first, but this is not a matter of determining when needed child care will be guaranteed. The statute requires that child care be provided to all participating parents.

The Child Welfare League recommends that (at 255.1 (e)) State plans be required to *describe procedures* established to ensure that child care meets applicable standards of State and local law and parental access *rather than merely furnish an assurance that such procedures exist.*

These are not insignificant components. Conformance with State and local law and parental access have to do with the basic safety of the children in care. Clearly the Congress expressed concern in these areas when mandating a report on the nature and content of State and local child care standards. (Conference Report, pages 162-163: "The State must provide the Secretary with a description of these State and locally determined requirements and guidelines which shall be used by the Secretary to make a report to the Congress on the nature and content of State and local standards for health and safety.")

The Child Welfare League recommends that the Subcommittee insist that the proposed regulations, including the preamble, reflect congressional intent by striking the prohibition on Federal reimbursement for child care worker recruitment and training.

The majority of States indicate that an integral part of any effort to provide child care, especially infant care, must involve recruitment and training of providers. This is not an easy task, given the very low wages currently offered for child care jobs. These wages are so low that child care jobs frequently do not qualify for employment programs because they would not raise families up to the poverty line, and the turnover rate of workers leaving child care jobs is exceedingly high. We would therefore suggest that States confronted with a shortage of child care for children of JOBS participants be given the flexibility to decide whether or not to undertake child care recruitment and training programs and receive Federal reimbursement for such programs.

To end as we began, we urge the Subcommittee to restore the focus of the child care provisions in the Family Support Act implementation in such a way as to assure safe and nurturing care for AFDC's real target population, children in need of basic supports.

STATEMENT OF MICHAEL A. GRAHAM, ASSISTANT DIRECTOR, OFFICE OF GOVERNMENT RELATIONS, NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

Thank you, Chairman Downey, for allowing the National Association of Rehabilitation Facilities the opportunity to submit testimony on the U.S. Department of Health and Human Services' proposed regulations for implementing the Job Opportunities and Basic Skills Training Program, a component of the Family Support Act of 1988 (Public Law 100-485).

NARF is a national association representing over 700 community-based vocational, medical, and residential rehabilitation facilities. NARF's membership is composed of a mix of rehabilitation provider organizations, including developmental centers, sheltered workshops, supported employment programs, projects with industry, freestanding rehabilitation hospitals, acute care hospitals with rehabilitation units, comprehensive outpatient rehabilitation facilities, residential and long-term care providers, as well as numerous other programs aimed at helping people with disabilities.

The Family Support Act of 1988, which was adopted by Congress and signed into law by President Reagan, was the first comprehensive overhaul of the nation's welfare system in 50 years. Of particular interest to rehabilitation facilities is Title II of the Act - the Job Opportunities and Basic Skills Training Program. The drafters of the legislation did an excellent job in crafting a comprehensive approach to assist AFDC recipients off welfare and into jobs that will lead to self-support. This emphasis on self-support has been the same goal of rehabilitation facilities. The rehabilitation facilities that NARF represents have proven through their experience that they can place even the hardest-to-serve clients into good jobs -- jobs that provide individuals with disabilities a substantially better income than they would otherwise receive under public assistance, along with a greatly improved quality of life.

The JOBS program offers several opportunities. Persons who are disabled and receive AFDC benefits will be eligible to receive services under the new program. Thus, the "traditional" client of rehabilitation facilities will benefit from the program, and facilities will continue to provide the same excellent services they have for decades.

However, you may be interested to know that many rehabilitation facilities also provide employment-related services to persons who do not have a diagnosed physical or mental disability. Such services to non-disabled persons are often provided through other Federal programs such as the Job Training Partnership Act. Hence, the JOBS program offers additional opportunities for both clients and facilities.

The proposed regulations indicate that states should maximize their resources "through the coordination of existing programs at all levels of government and in concert with community-based volunteer and business organizations." Again, one excellent source of information and experience in operating programs that provide job training and work experience to assist individuals in self-support are the community-based rehabilitation facilities. Let me give you just one example of a rehabilitation facility that is presently operating an employment and training program for AFDC clients, under contract with the local Department of Social Services.

Goodwill Industries of Greater Detroit presently has three contracts with the Wayne County Department of Social Services. The first provides vocational assessment of 180 clients. Under this contract, Goodwill Industries provides academic, aptitude and interest testing of incoming clients participating in the employment and training program. After the testing is completed Goodwill Industries then develops an employability plan. The plan makes recommendations as to the strengths and weaknesses of the client regarding their ability to obtain employment, their potential employment opportunities, and the types of services they will require to become employed. This is the second year Goodwill Industries has had this contract with Wayne County. The results have already proven to be beneficial for the county, Goodwill Industries, and the clients who participate in the program.

The second contract is for motivational/employability training, job development and placement. This three week/90 hour course emphasizes the removal of barriers to employment and provides each participant with the knowledge and skills they need to secure and retain entry level employment. Job development and job placement assistance is then provided for successful program completors. There are presently 50 slots available in this program. The program requires the client to be job-ready and not be in need of additional vocational training or education in order to obtain employment. This program emphasizes positive aspects of oneself and their work attitude and includes values clarification, goal setting, and problem solving. The employability training stresses job application and resume writing, interviewing skills, securing references and effective job search techniques. The program stipulates that clients must be placed in jobs paying a minimum of $4.50 per hour with at least 30 hours of work per week.

The third contract is for a "general clerk" program. This 17 week course is designed to provide the trainee with the clerical skills necessary to perform entry level clerical occupations. Trainees who successfully complete the program will possess the aptitudes and skills in the areas of bookkeeping, typing, office machines and filing. Employability Skills Training and Job Development/Job Placement assistance is also provided. This program serves 30 trainees. In addition, the program places emphasis on educational skills, requiring at least a sixth grade reading and mathematics proficiency level and/or a GED or high school diploma. Educational skills are enhanced with classes in areas of Business English and Math, Computer Literacy, and Proofreading.

This program is just one example of the types of services that rehabilitation facilities can provide. The years of experience that they have in working with the community, particularly the business community, is invaluable in assisting clients into jobs.

The proposed regulations specify that State IV-A agencies should maximize flexibility in administering these programs under the Act. Specifically, the regulations say "we recognize that in many States, other agencies - such as Job Training Partnership Act (JTPA) agencies, the State education agency, the State employment security agency and community-based organizations--have been effectively performing a range of educational, training and employment related functions for welfare recipients. Thus, rather than requiring State IV-A agencies to train or expand in-house staff to perform similar JOBS functions which do not directly involve discretionary judgements, we propose to provide IV-A agencies the flexibility of determining how they can most effectively use all potential State resources."

We would like to emphasize that facilities are an excellent resource in assisting states with the implemention of this program while providing the best services possible for clients. In fact, rehabilitation facilities may be able to provide services in those areas of a state where access to clients services is a problem.

Therefore, NARF would like to make three recommendations regarding the proposed regulation. First, since the JOBS plan must be consistent with JTPA coordination criteria and must be reviewed by the State Job Training Coordinating Council (SJTCC), we recommend that a rehabilitation facility representative be a member of the coordinating council. Their expertise will be invaluable, especially in the areas of coordinating programs like JTPA and the Family Support Act.

Second, since "at the local level, the welfare agency must consult with Private Industry Councils (PICS) on the development and arrangements of contracts under JOBS to identify and obtain advice on the types of jobs that are available, or are likely to become available in the area", that the PICS should also include a representative of a program or agency providing vocational rehabilitation to people with disabilities. The experience rehabilitation facilities have gained in working with the business community has provided both parties with the knowledge needed to assist persons with barriers to employment into the workforce.

Finally, we believe that the regulations should strongly encourage that states to contract specifically with community-based organizations, especially rehabilitation facilities. This recommendation was not only emphasized in the regulations but also in the statement submitted by Howard Rolston, Associate Administrator for Program Evaluation in the Family Support Administration of the Department of Health and Human Services when he appeared before the Subcommittee on May 25, 1989. In his testimony Mr. Rolston commented that "extensive coordination of existing education, training, employment and early childhood programs at all levels of government and in concert with community-based volunteer and business organizations, is critical for any successful JOBS program."

We believe the legislation will, if implemented properly, move families off public assistance and into self-sufficiency. It only makes sense that when starting up a new program you turn to those who have had the most experience in this area. Rehabilitation facilities are an excellent source of assistance in order to carry this mission out.

STATEMENT OF PEGGY CONNERTON, DIRECTOR OF PUBLIC POLICY, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

I am Peggy Connerton, Director of Public Policy for the Service Employees International Union.

I thank you for the opportunity to present the views of SEIU regarding the Family Support Act of 1988.

SEIU represents 925,000 members, including more than 450,000 employees in the public service. Our membership includes many who work to provide welfare services as well as some whose low income keeps them just outside of poverty.

We congratulate HHS on their timely issuance of proposed JOBS regulations. Nevertheless, we have serious substantive reservations about a number of components of the new program. Our concerns focus on discrepancies between the proposed regulations and the Congressional intent reflected in the language of the statute.

In particular, we have identified issues in the areas of contracting-out, displacement, participation, and child care.

Contracting Out

In the preamble of the proposed JOBS regulations, the Family Support Administration declares that it is their intention to neither encourage nor discourage state agencies from contracting-out JOBS functions. We endorse this intent. The notion of contracting welfare for profit is particularly objectionable, on its face contrary to the goals of the program. We want to make sure that JOBS participants get the best services possible, that existing public agencies are used to provide services where they are best suited to provide such services, and that administrative and AFDC discretionary functions should not be contracted out. The need is manifest for controls and accountability wherever contracting-out is contemplated.

The proposed regulations carry out the intention to neither encourage nor discourage contracting-out in the way in which the regulations define accounting for costs for the purposes of determining federal reimbursement rates. Non-public agencies that provide JOBS services must account for their costs in the same way as public agencies so that no differential reimbursement rates result. We were pleased to see that HHS spelled this out specifically. However, a problem remains in another portion of the regulations which addresses reimbursement rates. Specifically, a lower federal match rate is prescribed for employees who work part-time on JOBS rather than full-time. We are concerned that one effect of this provision would be to discriminate against the public employees, especially in smaller counties, who are more likely to have additional non-JOBS responsibilities, and thus be engaged in "part-time" JOBS work. Besides the perhaps unintended effects of this provision, the distinction between full- and part-time JOBS workers is likely to confuse administrative accountability for the program, and result in lower reimbursements for some states depending merely on their administrative procedures.

Displacement

The Family Support Act included strong language to prevent displacement of regular paid public employees by work program participants. This was a wise restriction on a program whose purpose is to bring new individuals into the work force - without displacing those who are already there. Unfortunately, the regulations as proposed by HHS and the Department of Labor work to weaken displacement protections.

The law restricts displacement of currently employed workers or positions. The proposed regulations imply that "or positions" has no meaning, and the regulations simply drop the provision.

In another paragraph, the proposed regulations rework clear language in the law. The statute bars employment or assignment of a JOBS participant where the effect is displacement of a regular employee or position. The proposed regulations significantly weaken this clear meaning by barring such displacement only where the employer has the intent to accomplish this displacement.

Similarly, the law provides that assignments may not displace individuals who are on layoff from a particular employer. The proposed regulations weaken the restriction to refer to layoffs within the same organizational unit.

These differences between the law and the proposed regulations reflect an attempt to use the regulatory process to circumvent explicit legislative intent. The regulatory proposals should be brought into conformance with the statute.

Grievance Procedure

The law requires that states establish a grievance procedure for resolving displacement disputes. The law further provides that the outcome of the state procedure is appealable to the Secretary of Labor for investigation and such action as the Secretary may find necessary.

The regulations do not provide any guidance to the states in terms of minimum standards for the grievance procedure which must be established. In addition, the regulations limit the federal review by stating that the Department of Labor review is limited to the record of the state's proceedings. If the regulations are going to restrict the federal review process to the state record, then they must also set up minimum standards for the state review, in order to ensure that there is a full record to be reviewed. Without minimum standards, it is all the more important that the federal review process allow for independent investigation. SEIU believes there should be specific grievance procedure guidelines for the states. In addition, the regulations should be corrected to reflect the law's intent that the Department of Labor be allowed to investigate complaints, and not merely review the state record.

Participation

Although the statute grants HHS discretion to define "participation," the specifications outlined in the proposed regulations serve to alter the intent of the legislation.

By establishing a 20 hour per week minimum for components such as job search and CWEP, versus a full time requirement for OJT and work supplementation, the regulations provide states with an incentive to choose certain options over others. Within these regulatory parameters, it is likely that states will look for the cheapest way to keep people active in the program and meet their participation requirements.

In the preamble, HHS goes so far as to say that they "strongly urge" states to concentrate their JOBS funds "on short-term activities which lead to employment." Clearly, the intent of these participation requirements is to make it more difficult to enroll individuals in the more intensive, long-term components.

By excluding certain activities such as orientation, assessment, and case management from being counted for participation purposes, the proposed regulations serve to devalue the importance of these functions. Enrollees may be rushed through the assessment process without giving case managers ample time to determine the most appropriate employability plan for each individual.

Participation requirements, while necessary, are not meant to act as the deciding factor in determining where JOBS participants are to be assigned. The primary determination for placing a participant in a particular component should be how well that activity helps her achieve her employment goals. The participation requirements need to be modified to reflect this intention.

Child Care

The intent of the law and the ostensible intent of the proposed regulations is to encourage volunteers in the JOBS program. However, the proposed regulations act counter to this purpose. The FSA contains a specific requirement that among target group members, volunteers must be given priority. In the preamble to the regulations, however, HHS interprets the term "volunteer" to include both exempt and mandatory participants. Thus, states under pressure to meet the imposed participation quotas for nonexempt recipients would be relieved of any obligation to serve exempt individuals who wish to volunteer.

Moreover, the proposed regulations sabotage the statutory guarantees of child care where needed for employment or training, and virtually eliminate any guarantee to provide services for exempt volunteers.

The regulations would allow states to limit availability of child care as long as the state funded sufficient child care to meet the minimum participation rates. Furthermore, HHS officials have reiterated that states may deny child care and other support services to exempt individuals who volunteer.

There are similar proposed regulatory limitations on child care services which allow states to diminish the law's guarantee based on state appropriation ceilings and availability of child care services. The limitations are further aggravated by the regulatory denial of federal matching funds for child care provider recruitment and resource development.

The proposed regulations, in direct conflict with the statute, cap reimbursement of local child care rates at 75 percent of the cost. The Family Support Act allows federal matching funds for 100 percent of the local child care rate. The restriction must be dropped.

The law provides for the availability of transition period child care services during the 12 months after an individual leaves the welfare rolls to work. The regulations propose to complicate and burden this very reasonable provision. Under the regulations, a welfare recipient must reapply in writing for such transitional child care after AFDC payments stop. This reapplication will cause disruption of services while the individual waits for the reapplication to be processed. SEIU recommends deletion of the reapplication requirement, with automatic provision of transitional benefits to eligible families.

Continuing Labor Input

SEIU is very interested in the JOBS program. As it develops over the next few years, we would like to actively participate in this process. Unfortunately, provisions in the regulations do not serve to adequately guarantee that labor will be able to provide regular input. Communication of this nature should be encouraged through stronger provisions requiring consultation with organized labor, Private Industry Councils, and State Job Training Coordinating Councils.

STATEMENT OF FREDERICK C. SMITH, FORMER CHAIRMAN AND CEO, HUFFY CORP., AND CHAIRMAN, UNITED WAY OF AMERICA TASK FORCE ON WELFARE REFORM

I am Frederick C. Smith, retired chairman and chief executive officer of Huffy Corporation in Dayton, Ohio, and am pleased to submit the following statement on behalf of the United Way of America for the Committee's record of the oversight hearing, May 25, on the Department of Health and Human Services' proposed regulations implementing the Job Opportunities and Basic Skills (JOBS) program (Federal Register, April 18, 1989) of the Family Support Act. I am a member of the United Way of America volunteer Public Affairs Committee and serve as the chair of the Committee's task force on welfare reform. In addition, I am chairman of the Board of Directors of Ohio United Way, the state United Way organization, and chairman of Ohio's Job Training Coordinating Council.

In addition to our statement, we are submitting for the record a copy of "Strategies for Self-Reliance: Preventing Dependency and Redesigning the Welfare System," United Way of America's policy statement on welfare reform that includes the principles used to evaluate the proposed regulations.

United Way of America is the national association representing approximately 2,300 independent United Ways located in communities across the country. In 1988, these United Ways raised nearly $2.8 billion for over 37,000 non-profit human service agencies. In fact, United Way is second only to the federal government in funding health and human-care services. But United Ways not only raise and allocate funds, they also work with agencies, government entities, and the private sector to identify community problems and needs and develop ways to address them.

Across the nation, United Way-supported agencies are engaged in planning, funding, and delivering many of the services that successful JOBS programs will depend on -- child care and child development, job training, job search assistance and placement, literacy training, remedial reading, dropout prevention, translation and cultural transition, and single parent family development. The list is long and the services are as varied as the communities they were developed to serve.

Typically, these programs and services are developed in processes similar to that called for in the Family Support Act, by United Ways consulting and coordinating with public and private communities. United Way's strong ties to the business community and its ability to bring diverse groups together can be a key to states' successful implementation of the Act.

United Way of America supports a welfare system that instills self-reliance and independence in recipients and that focuses resources on eliminating barriers to self-sufficiency and preventing long-term dependency.

To help build such a system, United Ways need to have a strong role in developing and supporting JOBS programs and services that can reduce barriers to employment.

We also recognize that government responsibility alone is not sufficient, that United Ways need to continue generating services and support from communities and the private sector.

Our statement addresses two areas of concern to United Ways: issues of public input and coordination, and obstacles to participation in the JOBS program that are posed by the child care provisions, participation requirements, and treatment of voluntary participants.

The proposed rules make adequate provision for consultation and coordination, and for public input in the development and operation of the state plan, basically following the statute.

We are concerned, however, about provisions that could hamper reaching the goals of the Family Support Act. These include the limit on child care market rates, the failure to assure child care for voluntary participants, and criteria for participation that set a 20-hours-per-week minimum and require that on-the-job training be full time in order to be counted.

The combined effect of these troublesome provisions is that JOBS program resources would likely be focused on the most job-ready, to the exclusion of parents with very young children who need comprehensive employment preparation and services.

ISSUES ADEQUATELY ADDRESSED

In general, the issues affecting roles for the voluntary sector are adequately addressed, and can be strengthened by minor changes.

PUBLIC INPUT AND VOLUNTARY SECTOR ROLES

The regulations make provision for public input in the development of the JOBS program, and in its ongoing operation, in accordance with the law.

United Ways support retention of the provisions for consultation, coordination, and contracting that will assure appropriate roles for the voluntary sector in planning, establishing, and operating JOBS programs.

We believe these provisions can be strengthened by adding in Final Rules the terms "non-profit organizations" and "non-profit service providers" to the list of entities specified in the sections on consultation, coordination, and contracting.

Even though United Ways are defined as community-based organizations under the law, specific mention of non-profits in the appropriate sections will clarify that the role of voluntary organizations in JOBS programs is not limited to community-based organizations as commonly identified and non-profit child care organizations.

STATE PLAN DEVELOPMENT

We view the opportunity to participate in development of the State JOBS Plan and Supportive Services Plan as critical. United Ways can play an important role in the formulation of the states' decisions about optional services to be provided, target groups served, and statewideness of programs and services.

The required consultation and coordination is to include identifying existing resources, preventing duplication, and assuring that services are available to participants. These are typical United Way-supported activities, which can be helpful in the implementation and ongoing operation of the program.

CONTRACTING

United Ways support the contracting of JOBS services and administration. We suggest that the term "non-profit service providers" be added to the list of examples mentioned in the regulations, to encourage states to contract with a broad range of voluntary agencies.

As intended by Congress, states are given latitude to contract the full range of services that will be needed for effective JOBS programs. Administrative functions also may be contracted, except for those requiring discretionary judgement about client eligibility and sanctions.

CASE MANAGEMENT AND CLIENT CONTRACT

United Ways support use of a strong case management approach and individualized service plans that define the obligations of both parties. These are essential mechanisms for coordinating the comprehensive services and resources needed to break the cycle of long-term dependency.

Since the law encourages but does not mandate these casework practices, the regulations also make it optional for the states and offer only sketchy guidelines. United Ways and local agencies will seek a stronger commitment to the case management approach during development of the state plan.

ISSUES OF CONTINUING CONCERN

The issues of concern are those that present obstacles to participation in the JOBS program, or that create administrative barriers and disincentives for states to serve the most needy parents: child care access, participation hours required, and treatment of voluntary participants.

Separately, these provisions pose barriers to participation or completion of JOBS activities. In combination, they will effectively exclude many parents from participation in the JOBS program and deny access to resources needed to participate.

CHILD CARE

The failure of the regulations to carry out the concept of guaranteed child care is a serious concern. The provisions make it unlikely that volunteers and the most difficult to serve parents can be assured of child care.

Providing child care is central to the entire JOBS program. Lack of access to dependable, affordable child care can be the single greatest barrier to employment. Unless the child care is available and provided, there can be little hope that long-term welfare recipients with young children will make the transition to self-support.

We recommend that the following issues be addressed in the Final Rule:

Guaranteed Child Care. The regulations should require states to provide child care for participants, including voluntary participants, as provided in the Family Support Act.

While the new law guarantees child care for both mandatory and voluntary participants in the JOBS program, the regulations permit states to guarantee it **only if resources are available**. Thus, available funds may permit states to exclude child care for volunteers in order to serve only those who are mandated to participate.

Transitional Assistance. Continuity of child care payments should be built into the system. Application procedures required for transitional child care may create gaps in eligibility and thus make job retention difficult.

The regulations require that parents who leave AFDC because of increased earnings, and are entitled to 12 months of additional child care payments, must undergo a separate application process for the transitional benefit. If they fail to apply promptly, the eligibility period is reduced by the amount of the delay.

Instead of risking disruption to clients, states should be permitted to establish systems that assure continuity of the child care payment, during conversion from AFDC to transitional child care eligibility. Similar mechanisms are used for Medicaid low-income eligibility, when families leave welfare and medical assistance is "decoupled" from AFDC.

Market Rate. States should be permitted to pay the full market rate, with costs reimbursable as provided in the law. In the proposed rules, reimbursement to states would be limited to 75% of the community market rate for child care.

Inability to pay caregivers the full market rate will limit the number of child care providers available to meet the needs of JOBS program participants. It may therefore force recipients to rely on less regular child care arrangements, which could jeopardize their attendance at JOBS program activities.

Child Care Resources. The proposed regulations would disallow federal reimbursement for provider recruitment and resource development. Under current law, these activities are allowable administrative costs, reimbursable at 50%.

This disincentive should be eliminated. The prohibition on federal matching funds would limit states' ability to expand child care resources -- an expansion that is critical to creating a successful JOBS program.

PARTICIPATION

The 20-hours minimum weekly participation requirement should be dropped. State JOBS programs should be permitted to monitor participation by clients in accordance with existing systems and law, and not be required to develop tracking systems that would divert funds away from services.

By imposing definitions of participation that go beyond the law's provisions, the regulations may encourage "creaming" and foreclose opportunities for participation by recipients with greater need for employment assistance.

The proposed regulations require client activity in JOBS to consist of at least 20 hours per week, a level that state welfare administrators of existing jobs programs say is unrealistic and impossible to document and track. If implemented, the regulation could cause JOBS programs to accept only persons who are more job-ready, or to emphasize hours over content in selecting service providers.

Time spent in orientation and assessment, each essential components of the JOBS program, would not count as participation, so states would have to meet their participation rate quota from recipients who have completed that phase. This will encourage emphasis on numbers of participants, over quality of individual employability plans.

VOLUNTARY PARTICIPANTS

Volunteers in the target groups (long-term recipients, recipients under age 24, and recipients with older children who will lose their eligibility within two years) should be given priority for participation and access to resources, including child care, as provided in the Family Support Act.

While the law requires that non-mandatory applicants be allowed to participate in JOBS on a voluntary basis, and assigns priority to target group volunteers, the regulations require only that states "give consideration" to volunteers, _if_ the program is available in their area, and state resources "otherwise permit."

The regulations should be revised to encourage states to serve voluntary participants.

In closing, I would like to thank the Committee for its oversight efforts and for giving us the opportunity to share our views. Like the Committee, United Way of America, and the United Way system, is committed to developing a welfare system that increases the chances for recipients to break the cycle of dependency and become self-sufficient. If we can be of further assistance in meeting this shared goal, please do not hesitate to contact us.

United Way

United Way of America

Strategies for Self-Reliance:
Preventing Dependency and Redesigning the Welfare System

EXECUTIVE SUMMARY

The goal of this nation's welfare program should be to build self-reliance and independence into the system for those able to work. Income assistance must be tied to work requirements and services to help overcome barriers to employment. Achieving results requires a sound federal framework which facilitates effective state and local service programs. United Ways must work at all levels of government to support creative, cost effective, and results-oriented policies and programs. While government bears primary responsibility for income assistance to the poor, government alone cannot transform the system. United Ways need to help develop services to reduce barriers to employment -- job training and placement, day care, illiteracy, school dropouts, drug and alcohol abuse, teen pregnancy, child development, prenatal care. Private sector initiatives are needed, as well.

United Way of America supports the following elements for redesigning our welfare system and services to the poor.

Work and Training. The welfare program should help people move into the labor force through job training, placement, and day care.

Program Funds Follow Mandates. Passing along responsibility to another level of government, to private and/or to voluntary sectors without support is not a solution.

Elimination of Disincentives to Work. Elements in the current system encourage people to choose welfare instead of working. People are often worse off if they take jobs.

Transitional Health Care Benefits. This is a major disincentive to work. Welfare recipients lose government health care benefits when they take jobs. Taking a job means putting their children's health at risk.

Human Services. Better services should be developed to break down barriers to employment. We need to do more in the short and long term to address day care, illiteracy, teen pregnancy, child development and other needs. Services should not be duplicated. They must be built around existing community based services, particularly voluntary services.

Contract with Recipients. Obligations of government and recipients should be clear. Both should be held accountable.

Feedback/Evaluation. Results should be measurable. Program evaluation, including client feedback, is needed.

State/Local Creativity and Flexibility. State and local decision making in designing job training and human service programs is needed.

Participation by Two Parent Families. These families are not eligible in many states for welfare, promoting family breakups to become eligible.

Adequate Care for Those Unable to Work. The elderly, disabled and single parents of very young children should be given adequate income.

United Way of America

POLICY STATEMENT ON WELFARE REFORM

United Way has a one hundred year history of addressing human care needs and problems. First formed in Denver, Colorado in 1887 as a response to the needs created by the gold rush and the vast westward migration, it now exists in over 2,300 communities across the country.

Since the establishment of government income assistance programs in the Great Depression, United Way has maintained this tradition of caring for people who slip through the social safety net that the government has erected. United Way has also formed partnerships with government to accomplish this goal and to more effectively meet human care needs.

Today, United Way is concerned that these social safety net programs are not working effectively. Our nation seems to be allowing the development of an underclass of people without the skills, the resources, or the self confidence to overcome barriers to employment and become full, productive participants in the American dream. Society must do a better job of helping all our fellow citizens to become productively employed to ensure continued economic development.

To reverse this trend, our nation must restructure the welfare system now and replace the present system of income support with a system of incentives and support for employment of those participants able to work. Achieving this goal requires, among other changes, an increased focus on human services.

Without this kind of help, long-term welfare recipients and people who may become welfare-dependent cannot surmount the obstacles that may be keeping them out of the work force.

United Way's history of human care service has given it broad expertise in helping people to become employable by generating and supporting services such as:

- Child and adult day care;
- Employment and employability training, job search and placement;
- Alcohol and drug abuse treatment;
- Youth character development, intervention for troubled youths, programs for school drop-outs, delinquency prevention;
- Teen pregnancy and parenting;
- Counseling for mental health or family problems.

In local communities United Way not only raises money for these and other services ($2.78 billion in 1989) but also, and more significantly, marshalls community support to find new ways to do these tasks better through leadership in community problem solving. Some examples include coordinating services, eliminating service duplication, and stimulating private sector initiatives. United Way has worked in partnership with government at all levels to assess human care needs and services available, plan and fund services, and address community problems.

From this base of knowledge and expertise, United Way supports the following principles for welfare reform.

Principles

- Any program mandates flowing to lower levels of government ought to be accompanied by adequate funding. The experience with deinstitutionalization of the mentally ill to community-based care and the resulting homelessness among the mentally ill shows the catastrophic impact of not following this policy. Most of the money saved in our institutions was not shifted to communities for alternative care. Few new programs were created to replace the old approach.

- The goal of welfare reform should be development of a system which will sustain economic growth by helping people to become employed in productive, useful jobs -- not make-work.

- To encourage and assist welfare recipients to become self reliant, a welfare reform plan must:

  - Avoid building into the system disincentives to self reliance;

  - Develop a strong human services and case management system to help people overcome barriers to their employment;

  - Extend transitional health care benefits to recipients moving into the work force;

  - Provide for a contract between the recipient and the administering agency to develop an individualized service plan and define the obligations of both parties;

  - Build in a feedback and evaluation component to assess the effectiveness of the welfare reform program in helping people to achieve self reliance.

- Those who are not able to work and become self supporting should receive an adequate level of financial support.

- An effective welfare reform plan must include a comprehensive human service element which goes far beyond job placement services. This piece is necessary to help people avoid welfare dependency and to assist long-term welfare recipients to overcome the obstacles that may have kept them out of the work force.

- The best human service systems for people in need are achieved through partnerships among the various levels of government and the voluntary sector.

  - Funding responsibilities may be shared within such partnerships, multiplying and better focusing the resources of each partner.
  - The voluntary sector can contribute matching funds or in-kind contributions to partnership efforts.

- The human services provided through welfare reform must be built upon the foundation of existing services and service systems in our local communities. Voluntary agencies already have much of this infrastructure in place.
  - Voluntary agencies now provide many services needed to help people become employable.
  - Voluntary organizations also have expertise in needs assessment and service coordination which ought to be used in planning and establishing the human service component.

- Welfare reform must encourage creativity and flexibility at both state and local levels in the implementation of work, education, and human service programs in order to permit programs to be tailored to unique social and economic factors in various parts of the country.
  - Local decision-making is especially critical. Local public and voluntary sector policy makers know their community's needs and their institutional resources.
  - In most communities, public and voluntary sectors have come together on an ongoing basis to address some community problems jointly. Welfare reform proposals should encourage these broad-based approaches as a means of stimulating new ideas.

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Cong. Th[illegible] Downey

May 25, 1989

The Honorable Thomas J. Downey
Acting Chairman
Subcommittee on Human Resources
House Ways and Means Committee
B317 Rayburn House Office Building
Washington, D.C. 20515

Dear Tom:

I am enclosing comments prepared by the Department of Labor and Industry of my state of Montana on the HHS draft JOBS regulations. I would appreciate your making them part of today's hearing record.

These comments primarily emphasize the problems with the regulation on "statewideness" as it impacts my state.

Thank you for your consideration of this important issue.

Best regards.

Sincerely,

Pat

Pat Williams

enclosure

DEPARTMENT OF LABOR AND INDUSTRY
EMPLOYMENT POLICY DIVISION

STAN STEPHENS, GOVERNOR
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HELENA, MONTANA 59624

May 23, 1989

Carol Hedges, Senior Policy Analyst
National Governor's Association (NGA)
Suite 250, 444 North Capitol Street
Washington, DC 20001

Dear Carol:

We appreciated the opportunity to participate during the meeting last week sponsored by NGA and the American Public Welfare Association (APWA). We are concerned as to potential constraints placed upon Montana's implementation of JOBS activities, from federal regulations drafted by the Family Support Administration (FSA), U.S. Department of Health and Human Services. I note Catherine Bertini's comments from an April 18th HHS press release, they "tailored these regulations to allow maximum state flexibility in designing JOBS programs geared to specific state needs." Yet, we view these same regulations as conflicting with Congressional intent expressed in the statute to focus on long-term objectives, and taking away state latitude to design programs to meet local needs and reflect existing training resources. Please share the following comments with APWA and other public interest groups who seek increased state latitude in the implementation of JOBS activities.

Montana's draft implementation plan presented to our legislature included the provision of JOBS activities and services in 8 to 10 locations, thus concentrating resources in population areas with available training facilities. Federal regulations on "statewideness" (sic) instead require JOBS activities to be available to 75% and 95% of AFDC recipients in each state. Due to our vast geographical area and widely dispersed population, 75% translates to 13 counties and 95% translates to 28 counties. (On the other hand, the federal WIN program was approved as statewide by HHS for several years although providing services in six of the more populous counties.) Attached you will find a list of the counties in which we would be required to site JOBS activities. Please note that due to their large size, we would not be able to locate JOBS staff in one county to serve clients from other counties. Some Montana counties are larger than some New England states.

The "statewideness" regulation would decimate our ability to focus resources on meaningful training activities to serve long-term clients. Congress wisely recognized the need to focus the minimal funding provided in JOBS by creating target groups, and

"AN EQUAL OPPORTUNITY EMPLOYER"

by setting a range of participation requirements from 7% to 22% of AFDC families. We believe Montana can meet these statutory goals, provided we can focus our resources to create meaningful educational, training, and employment opportunities that will initially attract and continue to engage participants because they result in real and lasting benefits for their families.

While requiring us to disperse JOBS activities to 28 locations, regulations further complicate the situation by docking the amount of federal reimbursement for less than 40-hour week JOBS staff. Quality service delivery will be hit hard by regulations on page 15660 which limit the Medicaid reimbursement rate (in Montana approximately 72%/28%) to only those JOBS staff who work full weeks on JOBS activities. We recommend state discretion to increase the availability of JOBS activities to more clients by breaking-up full-time JOBS FTE's into parts, so that if a client caseload only requires a half-time staff person we efficiently only hire a half-time staff person. Current regulations limit federal reimbursement to 50% for any FTE which is not full-time (full-week) devoted to JOBS, thus encouraging states to put JOBS resources into staffing versus training dollars for clients.

Further, regulations limit the Medicaid reimbursement rate to only staff salaries and benefits -- as if providing services did not require an office or a telephone. We propose the higher federal reimbursement rates be expanded to include required operating costs for JOBS staff.

We disagree with the apparent federal emphasis on process, in contrast to substance, in regulations requiring states to make a "minimal program" available to 95% of adult recipients." "Minimal" includes outreach, assessment, employability planning, attendance-taking/sanctioning procedures, with referrals to high school and Job Service as the only training required. Based on actual testing, 92% of adult Montanans are already literate. Thus, a "minimal" program will not benefit our recipients who lack needed job skills to compete for employment opportunities in our state. Further, it requires us to expend valuable resources merely to comply with regulations, creating a punitive approach to JOBS that we fear will disperse the funding so widely we will not be able to provide the meaningful training activities and services needed for success.

Draft regulations which require states to take weekly attendance and to limit our "counting" of participation to those activities in which participants are engaged a minimum of 20 hours per week are another onerous product of this emphasis on process, versus substance. We urge this process be changed from attendance-taking to HHS review of training curriculum in conjunction with the state plan approval process. In addition, HHS staff have deleted assessment, employability planning, case management, and job development and placement from activities states can "count" in meeting participation requirements-- as if these activities were not integral and necessary to comprehensive and effective job training. We recommend training be conducted for HHS staff who do not recognize the value of these activities and that clients involved in these activities be included in "counts" toward meeting participation requirements.

Third, mandates in the preamble (page 15655, Sec.250.46) "concentrate JOBS funds on short-term activities which lead directly to employment". The weight to be attached to preamble language in the HHS state-plan-approval-process is not defined. This objective directly conflicts with statutory language requiring states to focus on meeting comprehensive needs of long-term AFDC clients. Generally-accepted labor market analyses agree most Americans change careers several times during their lives; therefore, a general education is the best preparation for continued employment.

Sufficient training for high-wage upwardly-mobile jobs is necessary for economic self-sufficiency. The strong emphasis in the regulations on 8th-grade literacy goals, while severely restricting our ability to support AFDC clients in postsecondary education, does not make sense for Montana where most clients will have achieved high school educational levels prior to JOBS enrollment. Initial testing of AFDC clients in model training programs has proven this is the case, with less than 10% requiring basic education and a high demand for postsecondary education. We recommend state latitude to increase emphasis of postsecondary training opportunities for AFDC recipients as appropriate. In response to language included on page 15655 by the Department of Education questioning "whether AFDC clients who have voluntarily enrolled in postsecondary schools have the ability to benefit from the programs in which they are enrolled", a significant percentage of AFDC recipients in model programs who enrolled in University classes have achieved a 4.0 GPA each term.

Further language in the preamble (page 15653 Sec.250.12) limits employability plans to those which "reflect availability of jobs in the local job market". Local is not clearly defined, but was considered last week to be the political subdivision in which the JOBS program is located. As you know, our rural areas have been hit hard by the recession in the agricultural sector. Job opportunities are scarce. We recommend employability planning include jobs in multi-state regional areas, as well as for local job markets. Encouragement and support for relocation will be required to make real the dream of economic self-sufficiency for a high proportion of clients.

We have several concerns with Montana's ability to provide quality child care to AFDC recipients, within the constraints posed by the draft regulations. No federal reimbursement is allowed for recruiting and upgrading the current child care delivery system. This prohibition will result in significant numbers of AFDC participants who will not be able to attend training activities nor accept employment, due to a lack of child care for dependent children. Our state, as is the case over much of the nation, lacks sufficient child care for dependents of the current number of people seeking employment and training. We recommend federal reimbursement be allowed and encouraged for expenditures to recruit and upgrade current child care delivery systems.

Regulations requiring Montana to pay for "informal" (unlicensed and unregistered) child care are contrary to current state statute and administrative rules. It is inappropriate for the federal government to place a state like Montana which has emphasized the development of quality child care, in the dilemma of having to authorize potentially substandard care for young children of AFDC families.

Finally, regulations which limit our selection of child care providers to those which charge only 75% of the local market rate will further decrease the number of providers we can contract with and will again result in lower quality of care. In light of current knowledge of the importance of quality day care for the healthy development of children, we find these regulations particularly disturbing. We encourage your efforts to increase state latitude to provide quality care for children of JOBS participants.

This concludes our comments at this time. Again, I would point to Catherine Bertini's own language citing the need for maximum state latitude in the implementation of JOBS. We agree with her view that states are in the best position to judge how to coordinate resources from JOBS with existing resources and to design high quality educational and job training opportunities to benefit long-term AFDC recipients and to increase their economic self-sufficiency.

If you have any questions or wish further information, please call me or Barbara Bonifas of my staff at (406)444-4500.

Best regards,

Sue Mohr

Sue Mohr, Administrator

cc: Pat Williams, U.S. House of Representatives
Bob Greenstein, Center on Budget and Policy Priorities
Mark Greenberg, Center for Law and Social Policy
Nancy Ept, Children's Defense Fund

May 23, 1989

IMPACT OF 75%/95% "STATEWIDENESS" (sic) REQUIREMENTS ON MONTANA

Assumption: During the last complete fiscal year for which SRS data is available (July 1987-June 1988), 9,628 is the total average monthly AFDC caseload and Montana chooses to meet the "statewideness" requirements by providing JOBS activities within counties where the highest concentrations of AFDC clients reside.

13 counties served: 75% requirement for "Complete" JOBS program

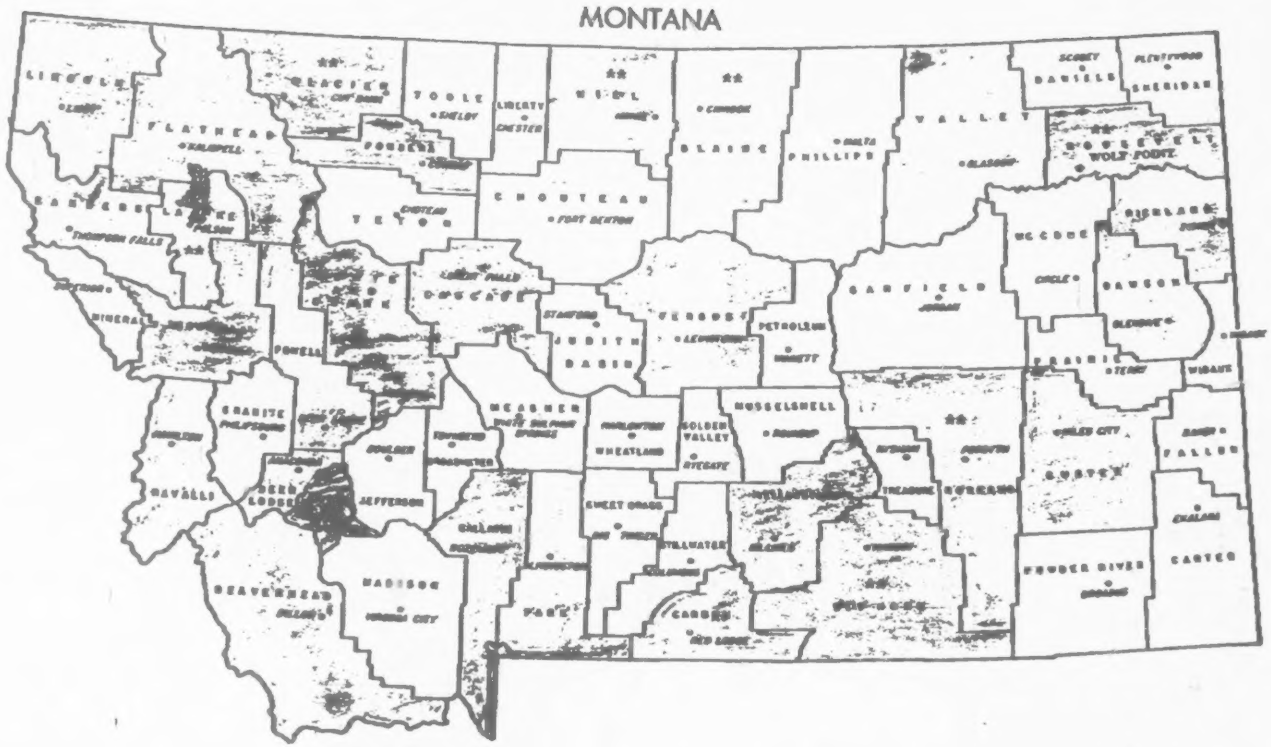
Yellowstone	1087	
Cascade	1029	
Missoula	977	
Silver Bow	650	
Flathead	600	
Lewis & Clark	500	
Glacier	486*	Blackfeet, Browning
Lake	377*	Flathead, Pablo
Big Horn	342*	Crow, Crow Agency
Hill	318*	Rocky Boy, Box Elder
Roosevelt	309*	Fort Peck, Poplar
Gallatin	264	
Lincoln	247	
Subtotal	7186	divided by 9628 = 74.6% rounded = 75%

28 counties served: 95% requirement for "Minimal" JOBS program

Rosebud	235*	Northern Cheyenne, Lame Deer
Ravalli	231	
Blaine	220*	Fort Belknap, Harlem
Deer Lodge	210	
Custer	150	
Park	134	
Richland	113	
Valley	103	
Sanders	97	
Beaverhead	80	
Dawson	80	
Carbon	73	
Pondera	71	
Fergus	68	
Powell	61	
+ Subtotal	7186	
Total	9112	divided by 9628 = 94.6% rounded = 95%

* Indicates Tribal Reservation headquarters sited within county.

Analysis does not reflect information relating to which Tribes on which Reservations applied to the Secretary of HHS to operate Tribal JOBS programs, nor whether HHS intends to consider Tribal JOBS programs as contributing to State's compliance with "statewideness" requirements.


MONTANA
LINCOLN
FLATHEAD
KALISPELL
GLACIER
CUT BANK
TOOLE
SHELBY
LIBERTY
CHESTER
HILL
BLAINE
CHINOOK
PHILLIPS
MALTA
VALLEY
GLASGOW
DANIELS
SCOBEY
SHERIDAN
PLENTYWOOD
ROOSEVELT
WOLF POINT
RICHLAND
SIDNEY
McCONE
CIRCLE
DAWSON
GLENDIVE
WIBAUX
PRAIRIE
TERRY
GARFIELD
JORDAN
PETROLEUM
WINNETT
FERGUS
LEWISTOWN
JUDITH BASIN
STANFORD
CHOUTEAU
FORT BENTON
TETON
CHOTEAU
PONDERA
CONRAD
CASCADE
GREAT FALLS
LAKE
POLSON
SANDERS
THOMPSON FALLS
MINERAL
MISSOULA
POWELL
GRANITE
PHILIPSBURG
DEER LODGE
ANACONDA
JEFFERSON
BOULDER
BROADWATER
TOWNSEND
MEAGHER
WHITE SULPHUR SPRINGS
WHEATLAND
HARLOWTON
GOLDEN VALLEY
RYEGATE
MUSSELSHELL
ROUNDUP
ROSEBUD
FORSYTH
TREASURE
CUSTER
MILES CITY
FALLON
BAKER
CARTER
EKALAKA
POWDER RIVER
BROADUS
BIG HORN
YELLOWSTONE
BILLINGS
STILLWATER
COLUMBUS
SWEET GRASS
BIG TIMBER
CARBON
RED LODGE
PARK
GALLATIN
BOZEMAN
MADISON
VIRGINIA CITY
BEAVERHEAD
DILLON
RAVALLI
HAMILTON

IMPACT OF STATEWIDENESS (sic) REQUIREMENTS IN JOBS REGULATIONS UPON MONTANA

▨ Needed counties to meet 75% Complete JOBS Program

▨ Needed counties to meet 95% Minimal JOBS Program

TOMMY G. THOMPSON

Governor
State of Wisconsin

June 8, 1989

The Honorable Thomas Downey, Chairman
Human Resources Subcommittee
Committee on Ways and Means
US House of Representatives
B-317 Rayburn HOB
Washington, D.C. 20515

Dear Representative Downey:

You accorded me the opportunity to testify on the matter of the regulations under development for the Family Support Act. I very much appreciate this. Enclosed is the testimony promised, now offered for inclusion in the record of the hearing. Please accept my apology for having been unable to appear in person on May 25.

Thank you for the immediate oversight you have exercised in this critical area. The economy needs these workers, the public needs to believe in the program in order to continue its support, and the disadvantaged families need our help in achieving independence.

Should you wish to discuss the matters raised in the statement, my staff will be at your disposal. Contact information is supplied in the statement. Thanks again for your courtesy and concern.

Respectfully,

Tommy G Thompson

TOMMY G. THOMPSON
Governor

Room 115 East, State Capitol, P.O. Box 7863, Madison, Wisconsin 53707 • (608) 266-1212

STATEMENT OF GOVERNOR TOMMY G. THOMPSON, REPRESENTING THE STATE OF WISCONSIN

I am pleased to have the opportunity to provide testimony to your committee on this very important national initiative. I believe the Family Support Act is a most significant piece of legislation and I support the goals of this historic reform. I am committed to implementing a reformed welfare system in Wisconsin that will help us realize the vision of the Family Support Act.

I would like to commend the Reagan/Bush Administration and Congress for designing a law that will have such a major positive impact in helping the most disadvantaged citizens in this great nation. I would like to further express my thanks for the support given to states like Wisconsin to allow us to move forward and be creative in designing our own programs to meet the needs of the constituents we serve. With the support and help of the Low Income Opportunity Board in working with the various federal agencies, we have already been able to design and implement major reforms to help those in need in Wisconsin.

While I support the provisions of the Family Support Act, I have several major concerns about the requirements included in the draft regulations. As a leader in the nation in the area of Welfare Reform, Wisconsin is very concerned about the impact the proposed regulations implementing the JOBS and child care provisions will have on the innovative programs we already have in place in our state.

Wisconsin was among the first states in the nation to obtain a federal waiver with the assistance of the Low Income Opportunity Board to implement a comprehensive Welfare Reform program. Many of the provisions included in the Family Support Act have already been implemented in Wisconsin, either through our federal waivers or with 100% state dollars.

One of the Welfare Reform initiatives that puts Wisconsin far ahead of many other states is our statewide AFDC employment program. The Work Experience and Job Training (WEJT) program is a comprehensive employment program that virtually mirrors the provisions of the JOBS program. Wisconsin's WEJT has been implemented in 34 counties serving over 90% of our mandatory AFDC population. In the balance of the state, we have Employment Search and the Community Work Experience Program. We believe the experience we have gained in operating these employment programs will be valuable to you and your committee as you address the requirements contained in the proposed regulations for the Family Support Act.

I would like to share with you some of the major areas of concern Wisconsin has with the proposed regulations based on our experience. Many of these concerns are shared by other states and were discussed at length at the NGA/APWA Meeting of States on May 9 and 10. I feel it is important for you to understand the effects these regulations will have on achieving the objectives of the Family Support Act, and how they will hinder the overall goal of helping those most in need to become self-sufficient.

1. State Flexibility

One of the Family Support Act's major goals is to provide flexibility to states to enact innovative welfare reform programs. I fully support state flexibility and believe it is most important that the federal rules reflect this goal. Not only do I support state flexibility, but I also believe local flexibility is important. One of the ways we have achieved this goal is that we have structured our employment programs in Wisconsin to allow local program operators to design a program to meet the needs of the individual clients they serve, considering the unique labor markets in their service area. It is our belief that the promise of real reform is at the local level. By allowing local program operators to work with community organizations, educational institutions, and public and private employers in their community, they can maximize scarce resources to design a program that truly meets the needs of their disadvantaged citizens.

The proposed regulations not only remove this flexibility from the local program operators, but from states as well. They make the assumption that clients in New York City need the same services as clients in Florence, Wisconsin.

The preamble to the proposed regulations states in several places that the intent is to give states flexibility. However, just the opposite has occurred. These regulations are extremely prescriptive and have taken away all flexibility for states to design programs to meet the needs of long term dependents. States like Wisconsin, which have led the nation in implementing innovative programs that provide a wide array of services to address the needs of recipients in our state, are forced to make major and disruptive changes. These changes will force us to redirect funds from client services to program administration, and are clearly counter-productive in assisting those most in need.

I believe that the intent and the vision of you and your colleagues in passing the Family Support Act was to provide states the opportunity to create new and innovative programs to serve as the building blocks of national reform. This is evidenced by the many demonstration projects that are available to states. The Family Support Act allows states like Wisconsin, who have been refining their programs for some time, to use this historic legislation to build on their existing initiatives. The draft regulations severely limit these opportunities.

2. Uniform Data Collections Requirements

The data reporting requirements in the proposed regulations are excessive and burdensome. They clearly will result in driving up administrative costs; dollars that could be spent on services to clients will instead be spent on designing and maintaining reporting systems to meet the requirements of these regulations.

We are especially concerned about the need to provide FSA a sample of monthly unaggregated case record data or the universe of JOBS case records. It is unclear to us what possible use FSA could make of this data from all 50 states, and it places a great administrative cost on state programs. It must be assumed that a similar cost will be incurred at the federal level to process all of this data obtained from multiple types of data systems. It seems that aggregate client counts would be sufficient to meet the needs of FSA in determining states' eligibility for enhanced FFP and would greatly reduce administrative costs.

Tracking fiscal expenditures by individual component and service will also be a major problem for state and local accounting systems. Our current JOBS program in Wisconsin now only tracks fiscal expenditures by separate FFP funding source and not by component. We recommend reporting fiscal expenditures in aggregate for all JOBS components as one cost.

If the data collection requirements included in the final regulations continue to place excessive reporting requirements on states, we must be given time to design reporting systems to meet those requirements. At the same time, states should be allowed to move ahead to implement JOBS.

In Wisconsin, we are ready to begin the federal JOBS program on July 1; our JOBS state plan has already been submitted. We must be given a transition period to develop accounting systems to meet any reporting requirements included in the final regulations.

3. FFP Funding for Part Time Staff

The draft regulations limit enhanced federal matching for staff under JOBS funding to those positions which are full time. This is especially unfair to rural states and states operating programs in rural areas.

It also reduces states' ability to coordinate delivery of services with other agencies, let alone with its own IV-A functions. For example, in Milwaukee County, the County Social Services Department would like to integrate some Income Maintenance and Work Program functions in meeting the spirit and intent of the Family Support Act. Must we discourage the largest county in Wisconsin from pursuing this innovative approach because of this funding restrictions?

Draft regulations require states to coordinate the JOBS programs with related services provided by other agencies. Yet, in many instances, this coordination may result in reduced FFP. As an example, staff with expertise in a specific service area could be used to provide the same service to clients in more than one program. In a rural county, the local JOBS program operator could contract with JTPA for the services of an experienced Job Developer to provide services to both JTPA and JOBS clients. Under the proposed regulations, enhanced funding would not be available for these services, even though the same services would be eligible for enhanced FFP if the same person were serving JOBS clients exclusively.

States are required to have a statewide program. In some areas of the state the AFDC population is so small that full time JOBS staff cannot be justified. Programs either operate with part time staff, or have staff that serve multiple roles. Programs in rural areas have a tendency to be more costly to administer, and this restriction in the draft regulations further aggravates the problem.

If the goal of the Family Support Act is to have programs serve recipients in all areas of the country and to provide a coordinated service delivery system, the regulations should support this by providing enhanced funding for all JOBS staff, not just those working full time, provided time spent in the program is appropriately documented.

4. JOBS State Plan

The draft regulations are explicit and highly prescriptive about state deadlines, timetables and steps that must be met in order to receive approval of a JOBS State Plan. There are no similar timetables or review procedures cited for the federal agency role in review and approval of state plans. However, FFP is not available to the state until this process occurs and the initial plan is approved.

Without specific timelines for federal review and approval, states have no guarantee that they can begin their program and be eligible for FFP on the scheduled implementation date. This is of particular concern for states planning to begin July 1, 1989, because the process is new.

Final regulations must specify timelines for federal review and approval of all plans, and include specifications for federal liability if those deadlines are not met.

5. Child Care Issues

Availability of child care is essential to the success of JOBS. Without adequate and dependable care, a parent will not be successful in developing employability skills, finding or maintaining employment.

As Governor, I have initiated many new proposals to expand state-funded day care. In fact, state funding has expanded 167% over the last two years. Nevertheless, in virtually every area of our state the need for child care presents a real obstacle in serving clients, particularly those potential long term dependents with young children. The same is true, I'm sure, in all states. States must not only fund existing care, but we must work to expand the supply of child care to meet any new demand.

Federal funding to help meet the additional demand must be reflected in the final regulations if the intent of the Family Support Act, to provide a "guarantee" of child care, is to be met.

Another concern we have in the area of child care is the statement in the preamble of the regulations that states could be subject to disallowances if it is determined that the individual was not satisfactorily participating. The proposed regulations require states to determine periodically that the individual is satisfactorily participating in the activity. Even if states follow a 3 month monitoring standard, the preamble cautions that the child care could be subject to disallowance if the client is not meeting the appropriate standards. This is unreasonable and unfair and should be removed from the final regulations.

Finally, in the area of child care, we are concerned that the regulations appear to limit reimbursement of child care to providing care for children under age 13 or those physically or mentally incapable of caring for themselves. Again, this removes the responsibility and flexibility from the case manager to design an appropriate service plan to meet the needs of the individual family.

While we agree that it would be rare for care to be needed for children age 13 and over, it must not be prohibited in the final regulations if we are to provide adequate services to families in all situations. Again, state flexibility should prevail if program operators are going to design employability plans to meet the needs of the clients they serve.

6. Maintenance of Effort

The FSA provides that states may not use federal JOBS funds to replace state funds for existing services and activities. It further states specifically that state and local spending must be maintained at least at the level of expenditures for fiscal year 1986.

This provision was interpreted by FSA staff at the recent Region V JOBS conference to mean that states could not reduce expenditures below the current level of expenditure at the time they implement JOBS. This is a significant difference, and especially penalizes states like Wisconsin that have been leaders in the area of Welfare Reform and have made major efforts in the last two years to expand their programs using state funds.

In addition, this interpretation seems clearly contradictory to the intent of the Family Support Act. The Act specifies expenditures for fiscal year 1986. We believe the verbal interpretation given by FSA is incorrect, and recommend that the intent of the law be clarified in the final regulations. That is, states are required to maintain at least the level of expenditures for fiscal year 1986 as specified in the law, not current expenditures at the time they implement JOBS.

7. States with Waivers

Wisconsin and other states have designed new and innovative approaches to reduce dependency through use of federal waivers. All of these models will be extensively evaluated so they can be considered for further reforms at the national level.

It is important that states who have taken the initiative to design and test new approaches, be allowed to continue with the systems they have in place beyond the waiver period if the change is proven to be effective in meeting the goals of the Family Support Act. Provisions should be added in the final regulation to allow these initiatives to continue as an part of a JOBS equivalency program.

Wisconsin's Learnfare Program is an excellent example of the type of program that should be allowed to continue under this type of provision. The Learnfare program has already demonstrated success in keeping dependent teens age 13 through 19, as well as teen parents, in school. Many other states are now looking to Wisconsin and designing similar programs. It is our hope and belief that our program will be used as the model for reform at the national level. If this reform does not occur before our waiver expires, we hope that the regulations will give us the authority to continue the program we have in place until such time as national changes do occur.

Conclusion

The Family Support Act has a lot of potential to truly reform our system of public welfare. We must not allow bureaucratic hurdles to prevent us from implementing reforms that have real hope of assisting individuals to become self-sufficient. You and your committee have the ability to make an important difference in shaping a national program that will meet the goals of the Family Support Act. I urge you , Mr. Chairman, to strongly consider the concerns that I have shared with you and to take this opportunity to make that difference.